



# Byron Shire Council



## Agenda

### Ordinary (Planning) Meeting

Thursday, 18 June 2020

held at Council Chambers, Station Street, Mullumbimby  
commencing at 11.00am

*Public Access* relating to items on this Agenda can be made between 11.00am and 11.30am on the day of the Meeting. Requests for public access should be made to the General Manager or Mayor no later than 12.00 midday on the day prior to the Meeting.

Mark Arnold  
General Manager

---

---

## CONFLICT OF INTERESTS

---

**What is a “Conflict of Interests”** - A conflict of interests can be of two types:

**Pecuniary** - an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated.

**Non-pecuniary** – a private or personal interest that a Council official has that does not amount to a pecuniary interest as defined in the Code of Conduct for Councillors (eg. A friendship, membership of an association, society or trade union or involvement or interest in an activity and may include an interest of a financial nature).

**Remoteness** – a person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to a matter or if the interest is of a kind specified in the Code of Conduct for Councillors.

**Who has a Pecuniary Interest?** - a person has a pecuniary interest in a matter if the pecuniary interest is the interest of the person, or another person with whom the person is associated (see below).

**Relatives, Partners** - a person is taken to have a pecuniary interest in a matter if:

- The person's spouse or de facto partner or a relative of the person has a pecuniary interest in the matter, or
- The person, or a nominee, partners or employer of the person, is a member of a company or other body that has a pecuniary interest in the matter.

N.B. “Relative”, in relation to a person means any of the following:

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descends or adopted child of the person or of the person's spouse;
- (b) the spouse or de facto partners of the person or of a person referred to in paragraph (a)

**No Interest in the Matter** - however, a person is not taken to have a pecuniary interest in a matter:

- If the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative or company or other body, or
- Just because the person is a member of, or is employed by, the Council.
- Just because the person is a member of, or a delegate of the Council to, a company or other body that has a pecuniary interest in the matter provided that the person has no beneficial interest in any shares of the company or body.

### Disclosure and participation in meetings

- A Councillor or a member of a Council Committee who has a pecuniary interest in any matter with which the Council is concerned and who is present at a meeting of the Council or Committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable.
- The Councillor or member must not be present at, or in sight of, the meeting of the Council or Committee:
  - (a) at any time during which the matter is being considered or discussed by the Council or Committee, or
  - (b) at any time during which the Council or Committee is voting on any question in relation to the matter.

**No Knowledge** - a person does not breach this Clause if the person did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.

**Non-pecuniary Interests** - Must be disclosed in meetings.

There are a broad range of options available for managing conflicts & the option chosen will depend on an assessment of the circumstances of the matter, the nature of the interest and the significance of the issue being dealt with. Non-pecuniary conflicts of interests must be dealt with in at least one of the following ways:

- It may be appropriate that no action be taken where the potential for conflict is minimal. However, Councillors should consider providing an explanation of why they consider a conflict does not exist.
- Limit involvement if practical (eg. Participate in discussion but not in decision making or vice-versa). Care needs to be taken when exercising this option.
- Remove the source of the conflict (eg. Relinquishing or divesting the personal interest that creates the conflict)
- Have no involvement by absenting yourself from and not taking part in any debate or voting on the issue as of the provisions in the Code of Conduct (particularly if you have a significant non-pecuniary interest)

---

---

## RECORDING OF VOTING ON PLANNING MATTERS

---

### Clause 375A of the Local Government Act 1993 – Recording of voting on planning matters

- (1) In this section, **planning decision** means a decision made in the exercise of a function of a council under the Environmental Planning and Assessment Act 1979:
  - (a) including a decision relating to a development application, an environmental planning instrument, a development control plan or a development contribution plan under that Act, but
  - (b) not including the making of an order under that Act.
- (2) The general manager is required to keep a register containing, for each planning decision made at a meeting of the council or a council committee, the names of the councillors who supported the decision and the names of any councillors who opposed (or are taken to have opposed) the decision.
- (3) For the purpose of maintaining the register, a division is required to be called whenever a motion for a planning decision is put at a meeting of the council or a council committee.
- (4) Each decision recorded in the register is to be described in the register or identified in a manner that enables the description to be obtained from another publicly available document, and is to include the information required by the regulations.
- (5) This section extends to a meeting that is closed to the public.

# BYRON SHIRE COUNCIL

## ORDINARY (PLANNING) MEETING

### **BUSINESS OF ORDINARY (PLANNING) MEETING**

#### **1. PUBLIC ACCESS**

#### **2. APOLOGIES**

#### **3. REQUESTS FOR LEAVE OF ABSENCE**

#### **4. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY**

#### **5. TABLING OF PECUNIARY INTEREST RETURNS (CL 4.9 CODE OF CONDUCT FOR COUNCILLORS)**

#### **6. ADOPTION OF MINUTES FROM PREVIOUS MEETINGS**

6.1 Ordinary (Planning) Meeting held on 21 May 2020

#### **7. RESERVATION OF ITEMS FOR DEBATE AND ORDER OF BUSINESS**

#### **8. MAYORAL MINUTE**

#### **9. NOTICES OF MOTION**

9.1 Lots 1 and 2, 22 Teak Circuit, Suffolk Park.....5

#### **10. PETITIONS**

#### **11. SUBMISSIONS AND GRANTS**

#### **12. DELEGATES' REPORTS**

#### **13. STAFF REPORTS**

##### **Sustainable Environment and Economy**

13.1	Review of 12 month car share pilot program .....	17
13.2	Draft Residential Strategy Submissions Review Report - Consideration of site-specific submissions requesting designation as an Investigation Area .....	20
13.3	PLANNING - 26.2016.6 Update on The Farm at Ewingsdale Planning Proposal .....	28
13.4	PLANNING - Report of the 14 May 2020 Planning Review Committee .....	33
13.5	PLANNING - Update Land & Environment Court Proceedings - DA 10.2019.458.1 Multi Dwelling Housing Comprising six (6) Dwellings at 6 Julian Rocks Drive Byron Bay.....	36
13.6	PLANNING - Byron Bay Arts & Industry Estate Precinct Plan and Lot 12 - Submissions Report .....	52
13.7	PLANNING - DA 10.2020.61.1 Multi-Dwelling Housing Comprising Ten (10) Dwellings at 7 Julian Rocks Drive Byron Bay .....	62
13.8	PLANNING - Planning Proposal 26.2019.11.1 - Lot 6 DP 8385 Yagers Lane, Skinners Shoot - Request for Dwelling Entitlement .....	82
13.9	PLANNING - Submissions Report: Draft Byron Local Strategic Planning Statement ..	90
13.10	PLANNING - Update on resolution 20-100 Reconsider carparking plan to Planning Agreement DA 10.2019.103.1 Restaurant at 784 Coolamon Scenice Drive Coorabell	100

# BYRON SHIRE COUNCIL

## ORDINARY (PLANNING) MEETING

### 14. QUESTIONS WITH NOTICE

*Questions with Notice: A response to Questions with Notice will be provided at the meeting if possible, that response will be included in the meeting minutes. If a response is unable to be provided the question will be taken on notice, with an answer to be provided to the person/organisation prior to the next Ordinary Meeting and placed on Councils website [www.byron.nsw.gov.au/Council/Council-meetings/Questions-on-Notice](http://www.byron.nsw.gov.au/Council/Council-meetings/Questions-on-Notice)*

***Councillors are encouraged to ask questions regarding any item on the business paper to the appropriate Director prior to the meeting. Any suggested amendments to the recommendations should be provided to Councillor Support prior to the meeting to allow the changes to be typed and presented on the overhead projector at the meeting.***

## NOTICES OF MOTION

**Notice of Motion No. 9.1**     **Lots 1 and 2, 22 Teak Circuit, Suffolk Park**  
**File No:**                             I2020/883

5

---

**I move:**

1.     **That planning staff consult with the owners of Lots 1 and 2, 22 Teak Circuit, Suffolk Park, to resolve any disputes over the location of adjoining driveways as they cross over the council median strip in front of 22 Teak Circuit.**
2.     **That should an agreement not be reached, any costs arising from new drawings and planning submissions be shared equally between both residents.**
3.     **That should a change in plans require the relocation of the adjoining streetlight on the median strip, relocation costs and upgrades be covered by Council.**

10

**Signed: Cr Jan Hackett**

**Councillor's supporting information:**

15     Our former Council approved a DA for a subdivision of 22 Teak Circuit, Suffolk Park.

The original residence (now Lot 1), was to front a battle-axe block (Lot 2) which has a very narrow access driveway running parallel to the original home on its north facing side.

20     The owner/developer of 22 Teak Circuit sold both lots once the subdivision was approved.

There are currently two new owners and although each purchased in full knowledge of the approved DA plans, objections have arisen since both purchases were finalised and Lot 1 owners are no longer happy with the plans.

25

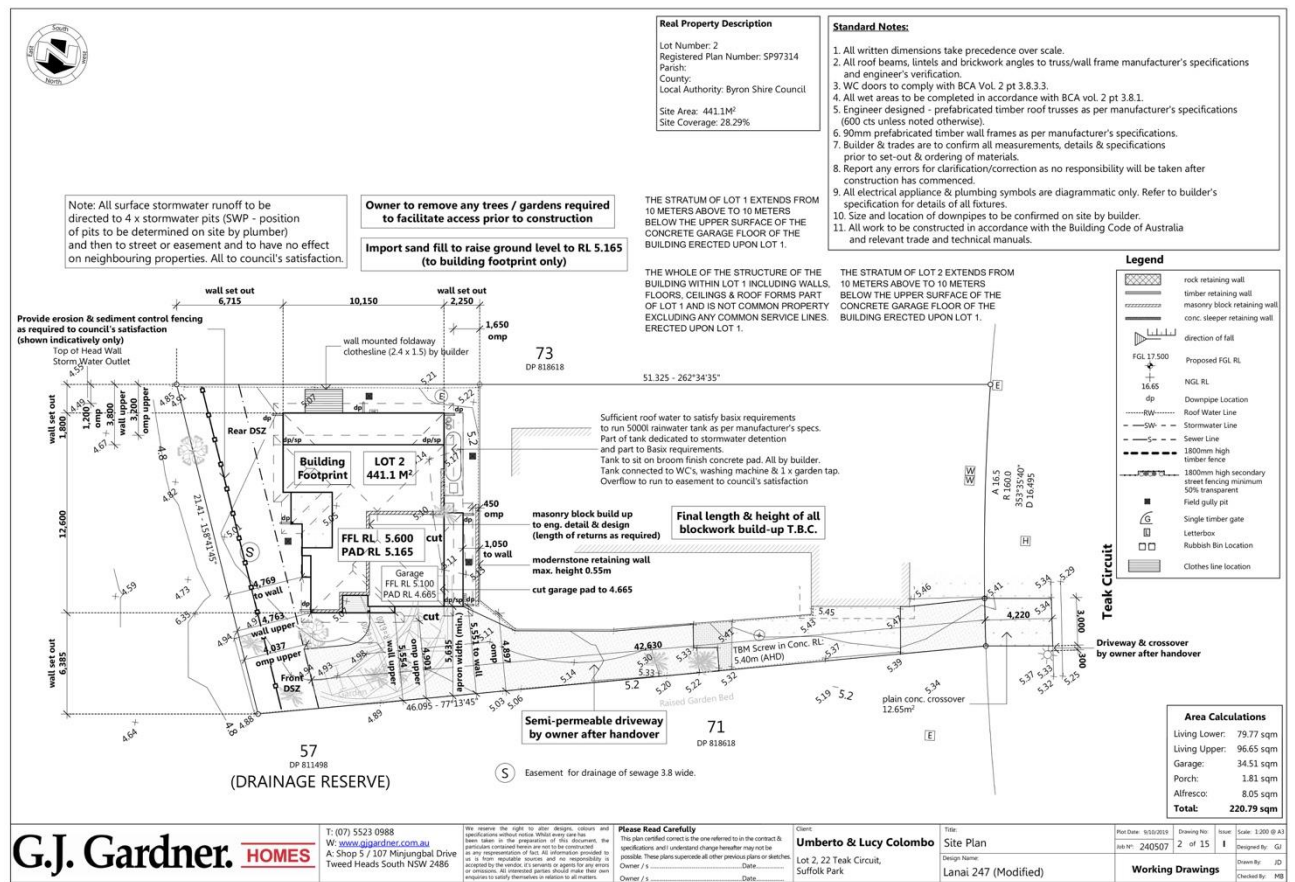
Lot 2 owners have in the meantime, presented plans to council for a secondary dwelling on the back block. These have been approved and their new home is nearing completion.

30     Meanwhile Lot 1 owners are taking legal action for loss of amenity against the owners of Lot 2. They are unhappy about the approved dwelling as well as the proximity of the narrow side driveway that connects the rear block. As a result, both neighbours have stopped talking.

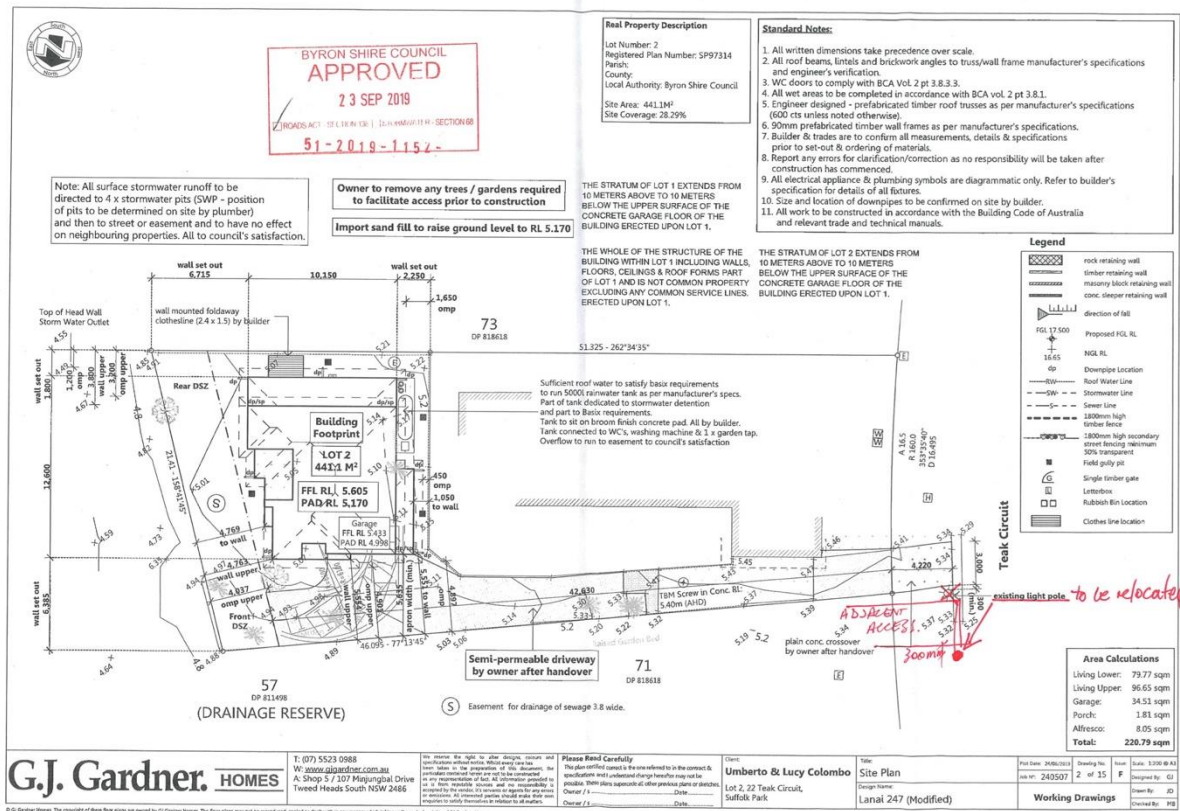
35     Regarding the location and angle of the battle-axe driveway, an early *sketch* shows the Lot 2 driveway to angle across the council median strip once it passes their private boundary. This was to clear a street lamp-post. The final drawings show this has been straightened at the crossover point. See 2 attachments.

40





The final approved plan reverts to an angled crossing over the council median strip, thereby avoiding streetlight proximity, but requests the relocation of the streetlight nevertheless.



For the Lot 2 driveway to cross the council median strip and avoid the streetlight, it must angle away towards Lot 1 driveway as per the original sketch.

On examining the drawings and plans, what seems to have happened is that Lot 1 drive has crossed the council median strip by paving straight out from their double garage rather than angling the crossover as per the first sketches and approved plans. This now means that for Lot 2 driveway to avoid the light-pole, they have to cut into the straightened neighbour's driveway, but only, note, where the driveways jointly cross the council owned median strip.

Planning staff have come up with two options – see below –

2019/180 - 22A Teak Circuit Suffolk Park - condition to do with light pole.

The background is as follows: the applicants/owners need to move a light pole for a battle-axe driveway to get required 3m width in – staff were happy for it to be narrower and dovetailed into neighbour's driveway provided they obtained the neighbour's consent. But neighbours are not talking; they have fallen out and don't like the new DA plans that have been approved.

The alternate is the light pole needs to be moved to provide room for the driveway – they only have 2.5 metres at present.

Given Lot 1 owners are taking legal action against Lot 2 owners and there is no conversation to be had between the warring parties, Lot 2 owners enquired into costs for moving the light-pole. What they discovered was that Essential Energy insisted that if a light-pole was to be moved, it would require an upgrade costing something like \$13000. Together with costs for relocation planning,



submission et al, Lot 2 owners would be looking at < \$20,000 just to get an approved driveway entry from the street across the council median strip to their own land and side driveway.

5 This leaves me with two questions and an alternative suggestion for a solution that would better satisfy the amenity of both Lot owners.

10 **Question 1:** Given the original plans showed that the light-pole would be sufficiently avoided if both driveways entered the street at a slight angle, and given that Lot 1 has not angled its double driveway where it crosses the council median strip, Lot 2 drive would now need to dovetail into Lot 1 drive in order to still clear the streetlight by a safe margin; **why is the owner of Lot 1 required to obtain consent from Lot 2 when the dovetailed section is positioned as per the original approved design and is over council land, not private land?**

15 **Question 2:** **If it is determined that the streetlight must be relocated regardless, given it is a council asset and sits on council land, should not this be at council cost?**

Alternatively:

20 Staff consider leaving the light-pole where it sits and negotiates with Lot 2 owners to share the adjacent Council easement, thereby giving them easy access to their own garage on the back block.

25 This would alleviate the amenity issues for Lot 1 owners. They could be offered to purchase the current battle-axe driveway for their own use, thereby removing the amenity concerns they have with a driveway running directly against their north facing house wall and side courtyard garden.

Photos attached.





















**Staff comments by Shannon Burt, Director, Sustainable Environment and Economy:**

5 (Management Comments must not include formatted recommendations – resolution 11-979)

**Response to question 1:**

10 A shared driveway between landowners at the crossover is possible, however owners consent from Lot 2 is desirable in the event that their driveway is damaged and there is a mechanism and understanding for repair and upgrade responsibilities should that occur between those land owners. At this point in time there appears to be no “neighbourly agreement” in place. Noting that this is inconsistent with Council Northern Rivers Local Government Design Manual \_ Handbook for Driveway Access to Property which states under 3.02(5)

15 *“Driveways are to be square to the road carriageway and not encroach on neighbouring frontages. In some instances, such as steep topography, Council may consider a variation to this requirement.”*



Further as noted in the photos within this Notice of Motion, driveways across the road reserve are used informally as overflow parking. With a shared driveway crossover, the potential for conflict could arise. In the event that an agreement was reached between neighbours then a variation to the driveway requirements would be possible.

### Response to question 2:

This is a possibility subject to a resolution of Council and budget being provided of up to \$20,000. It is however the normal responsibility of the developer to move infrastructure where required and at their expense. Council's standards under the Northern Rivers Local Government Design Manual require a 300mm clearance to existing infrastructure.

### Alternative Options

#### Alternate option 1

Physical access to the driveway and property is possible through the adjacent reserve. This would require an amendment to the Development Consent and the S138 Application. The existing driveway and crossover to the reserve would then need to be upgraded at the applicant's expense and an easement created over the reserve.



However it is noted an easement across the reserve is not permitted under the Plan of Management (POM) for the site, and therefore the POM would need to be amended or varied to permit this.

Alternative Option 2

A second and more simple option would be for a narrower driveway of only 2.5 metres across the frontage of the property (provided the 300 mm setback to the light pole is in place), and a variation to the Northern Rivers Local Government Design Manual to be approved.

Should this be the preferred option of Council by resolution, this will give guidance to staff in assessing any subsequent amendment to the current approvals, and in responding to any complaints or queries from surrounding landowners as to why a variation was given for a narrower driveway.

A driveway with a nominal width of 2.5 metre would provide sufficient width for standard vehicles to enter and leave the site. In these circumstances it would not set a precedent for other development control variations.

If this is the preferred option by Council then the landowners should be invited to lodge an amendment to the development consent and the S138 Approval accordingly.

To achieve this staff amended recommendation follows:

**I move:**

- 1. That Council note the staff comments in response to the questions raised by the NOM.**
- 2. The landowners be invited to lodge an amendment to the relevant development consent and S138 Approval at their own expense to seek a variation to the current development controls to permit a 2.5m driveway with a 300mm setback to the light pole.**

Financial/Resource/Legal Implications:

Should the staff recommendation be supported nil costs to Council as all costs to be borne by the land owner.

Conversely, should Council seek to address the issue via the relocation of the light pole on the owner's behalf then a budget of up to \$20,000 would be required. There is no identified budget allocation for this to occur.

Should the driveway be repositioned to enter the site via neighbouring public reserve, Council will need to grant an easement across the reserve. Survey costs and registration of the easement would be at the applicant's expense.

Is the proposal consistent with any Delivery Program tasks?

No



**STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY**

**Report No. 13.1      Review of 12 month car share pilot program**

**Directorate:**      Sustainable Environment and Economy

**Report Author:**      Sam Tarrant, Planning Support Officer

**File No:**      I2020/516

**Summary:**

This report outlines the community usage of the share cars operated by Popcar within Byron Bay and Mullumbimby.

In 2018 Council resolved to trial a 12 month car sharing pilot program in Byron Shire. Popcar was selected as the most suitable operator for the pilot.

Popcar launched on 5 June 2019, providing 8 cars in Byron Bay and 2 in Mullumbimby.

During the pilot the share cars have been used on 506 occasions with bookings totalling 5,987 hours.

Usage has been steadily growing over the 12 months with a slight reduction in the final months likely due to Covid-19.

The inclusion of the share cars in Byron Shire provides an alternative transport option for the community, can help to reduce the need for private car ownership and when coupled with other mechanisms, facilitate the people first, cars second vision of the Byron Town Centre Masterplan.

Based on the continued use of the share cars and the benefits this service brings to the community it is recommended that Council continues to lease the 10 bays to Popcar to continue to operate the share cars within Byron Shire.

---

**RECOMMENDATION:**

1.    **That Council continues to lease the 10 bays to Popcar to provide a car sharing service in Byron Bay and Mullumbimby and invite Popcar to renew their annual lease.**
2.    **That staff liaise with Popcar and the Local Traffic Committee about possible expansion of car parking spaces.**
3.    **That a report outlining the next 12 month usage statistics be provided to Council in June 2021.**

**Attachments:**

- 1      Car share 12 Month usage report, E2020/37787 

**REPORT**

At the meeting of 22 February 2018, Council resolved **(18-115)** to support the progression of a 12 month car share pilot. Expressions of Interest were sought from car share companies to provide and manage 10 share cars in Byron Shire for the 12 month pilot.

In February 2019 Council resolved **(19-009)** to select Popcar as the car sharing operator for the commencement of a 12 month pilot. This report provides the usage data for the 12 month pilot.

Popcar launched their services in Byron Shire on June 5, 2019 with 8 share cars available in Byron and 2 in Mullumbimby.

Over the past 12 months the vehicles have been used on 506 occasions. Bookings have been made totalling 5,987 hours. There are over 200 members from Byron Shire that have subscribed to the service. These numbers demonstrate that this service is of a benefit to the community and provides a viable alternative to private car ownership. Additionally the vehicles are hybrid, helping to reduce carbon emissions.

A comprehensive report detailing the usage of each vehicle from June 2019 to June 2020 is contained in Attachment 1.

It should be noted that due to Covid-19, there has been a reduction in usage for the last couple of months of the pilot program.

There have been no issues reported from parking enforcement about unauthorised vehicles parking in the car share bays. No negative feedback has been received from the community regarding the bays or there locations during the pilot.

Popcar have provided additional vehicles in the recent Habitat Development independently of Council. The usage of these vehicles is not included in this report.

Council also received an award from Local Government NSW for cultural change innovation and excellence for being the first regional council to introduce a car sharing program.

Popcar has indicated that they would like to continue to operate this service in the Shire and would be interested in working with Council to put additional vehicles in other locations as deemed appropriate.

**Conclusion**

The inclusion of the share cars in Byron Shire provides an alternative transport option for the community, can help to reduce the need for private car ownership and when coupled with other mechanisms, facilitate the people first, cars second vision of the Byron Town Centre Masterplan.

Based on the continued use of the share cars and the benefits this service brings to the community it is recommended that Popcar continue to be provided the car parking spaces to operate the share cars within Byron Shire.

**Next steps**

Popcar will be required to renew the annual permits to operate within Byron Shire. A report will be presented to Council in June 2021 outlining the next 12 months usage statistics.

**STRATEGIC CONSIDERATIONS**

***Community Strategic Plan and Operational Plan***

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
<b>Community Objective 1: We have infrastructure, transport and services which meet our expectations</b>	1.6	Manage traffic and parking in an efficient manner	1.6.3	Ensure new infrastructure is planned and funded to meet the needs of the current and future population (SP)	1.6.3.2	Report on pilot car share program outcomes for Byron Bay

5 ***Legal/Statutory/Policy Considerations***

N/A

***Financial Considerations***

10 The installation of the car share bays was funded by Popcar.

Popcar will need to apply to renew the annual permits to continue to lease the car share bays. The permits are \$110 per space as outlined in the Car Share Procedure and Council's Fees and

15 Charges.

***Consultation and Engagement***

N/A

20

**Report No. 13.2**      **Draft Residential Strategy Submissions Review Report - Consideration of site-specific submissions requesting designation as an Investigation Area**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Natalie Hancock, Senior Planner  
Steve Daniels, Project Officer - Planning Reforms

**File No:** I2019/2062

**Summary:**

Council is preparing a Residential Strategy (strategy). It is a policy framework and action plan to guide residential development in our urban areas for at least the next 20 years. The strategy relates to future housing in Bangalow, Brunswick heads, Byron Bay, Mullumbimby, New Brighton, Ocean Shores, South Golden Beach, Suffolk Park and Sunrise.

Council in December 2018 resolved (**resolution 18-823**) to exhibit a draft strategy and associated Appendices), noting that the documents as presented to Council were working drafts and further refinements are required prior to public exhibition.

The engagement at that time was designed to inform the community about the content and direction of the strategy and seek feedback on the development of a final strategy. This report provides an overview of the engagement process and provides recommended outcomes for the final strategy.

A total of 19 submissions were received from landowners expressing an interest in having their land designated for residential land purposes in the strategy. This report includes a summary of the assessment outcomes for those sites and provides recommendations for Council's consideration.

The remaining submissions received during the exhibition period will be addressed in a further report to Council.

---




**RECOMMENDATION:**

1. **That Council supports the Residential Strategy being updated to include the following lot and DPs, as detailed in Attachment 1 (#E2020/40080), as investigation areas in the Strategy:**
  - a. **part of Lot 12 DP 527314 (20 Prince St Mullumbimby) due to Strategy investigation areas to the south east potentially contributing to this being a small pocket of isolated rural land within the Mullumbimby township.**
  - b. **Lot 1 DP1256460, Lot 1 DP803292, Lot 2 DP1256460, Lot 2 DP803292, Lot 4 DP837851, Lot 5 DP1111848 (152 Stuart St, Mullumbimby & 124, 127, 130, 132, 134 Station St, Mullumbimby)**
  - c. **part of Lot PT32/1169053 located east of Tuckeroo Avenue, Mullumbimby**
  - d. **Lot 3 DP1220608 (21 Ballina Road, Bangalow)**
2. **That Council requests staff to advise the submission proponents of the following sites as detailed in Attachment 1 (# E2020/40080) that their land is excluded from further consideration as part of the investigation areas under the Residential Strategy due to inconsistency with the North Coast Regional Plan Settlement Guidelines and the policies and directions contained in the Byron Shire Draft Residential Strategy:**



- a) Lots 1 & 2 DP 1126204 and Lot 7 DP 573269 (29 Buckleys Road, Tyagarah)
  - b) Lot 1 DP 781835 (1C Ann St, Mullumbimby)
  - c) Lot 2 DP 875011 (142 Main Arm Road, Mullumbimby)
  - d) Lot 4 DP 874348 (1897 Coolamon Scenic Drive, Mullumbimby)
  - e) Lot 12 DP57826 and Lots 1 & 2 DP1187038 (1862 Coolamon Scenic Drive, Mullumbimby)
  - f) Lot 10 DP1132925 (1982 Coolamon Scenic Drive, Mullumbimby)
  - g) Part of Lot PT32/1169053 located west of Tuckeroo Avenue, Mullumbimby
  - h) Part of Lot 162 DP1251169 located on Clays Road, Mullumbimby
  - i) Lot 285 DP1198641 (64 Corkwood Cr, Suffolk Park)
  - j) Lot 22 DP 549688 (139 Bangalow Road, Byron Bay)
  - k) Lot 1 DP12330 (Broken Head Quarry Site, Broken Head Rd, Suffolk Park)
  - l) Lot 100 & 101 DP 1158494 (900 Bangalow Road, Bangalow)
  - m) Lot 3 DP1164722 (16 Bangalow Road, Bangalow)
  - n) The Saddle Road area ('Area 17' Byron Rural Land Use Strategy)
3. That Council requests staff to advise the submission proponents of the following sites as detailed in Attachment 1 (# E2020/40080) that their land is excluded from further consideration as part of the investigation areas under the Residential Strategy due to inconsistency with the North Coast Regional Plan Settlement Guidelines:
- a) Lot 2 DP 1032298 (75 New City Road, Mullumbimby)
  - b) Part of Lot 350 DP 755695 located on Ewingsdale Road, Byron Bay
4. That Council requests staff to update the Residential Strategy Background Report to incorporate:
- a) The State Policy consistency check to include any new investigation areas as supported by Council.
  - b) Dwelling and population figures and infrastructure network capacity information to reflect investigation area changes.
5. That Council requests staff include the investigation areas identified in recommendation (1), and make changes in recommendation (4) to the Residential Strategy document and publicly exhibited it for a minimum 28 day period.
6. That Council notes a further report will be tabled post the outcome of recommendation (5) above for Council to consider any submissions received during the exhibition of the additional investigation areas and to consider the remaining submission issues in order to finalise the Residential Strategy.

**Attachments:**

- 1 Submissions Summary Review\_Potential Investigation Areas\_Residential Strategy, E2020/40080 
- 2 Confidential - Combined Submissions: Requests for land to be included as an Investigation Area - draft Residential Strategy, E2020/39736
- 3 North Coast Regional Plan Settlement Guidelines, E2020/41782 
- 4 Special Disclosure for Pecuniary Interest Annexure, E2012/2815 

## REPORT

### Background and Purpose

Council is preparing a Residential Strategy (strategy). It is a policy framework and action plan to guide residential development in our urban areas for at least the next 20 years.

The strategy relates to future housing in Bangalow, Brunswick heads, Byron Bay, Mullumbimby, New Brighton, Ocean Shores, South Golden Beach, Suffolk Park and Sunrise.

The strategy is the result of three years of planning, research and community consultation. This has included the Housing Needs Report, the Housing Summit, and targeted community engagement, the Accessible Housing Project, the Housing Roundtable and the Housing Charrette. Overall, this collection of work clearly indicated that a healthy supply of housing for a range of incomes, lifestyle choices, household types and life stages is needed to maintain our community diversity and social cohesion.

Council in December 2018 resolved (**Res 18-823**) to exhibit a draft Residential Strategy and associated Appendices, noting that the documents as presented to Council were working drafts and further refinements are required prior to public exhibition.

This report provides an overview of the engagement process and submissions received from landowners expressing an interest in having their land designated for residential land purposes in the strategy. This report includes a summary of the assessment outcomes for those sites and provides recommendations for Council's consideration.

The remaining submissions received during the exhibition period will be addressed in a further report to Council.

### Overview of engagement

An Engagement Plan for the strategy was endorsed at the 13 December 2019 Council meeting.

The engagement program undertaken was designed to inform the community about the content and direction of the strategy and seek feedback on the development of a final Strategy. It built on earlier targeted engagement that has helped inform the preparation of a preliminary draft strategy. Diagram 1 in Attachment 1 summarises the pathway taken in looking at important issues.

The structured engagement program was undertaken in two steps.

- Shaping our neighbourhoods (May 2019)
- Full exhibition (28 August – 11 October 2019)

The full exhibition involved the following activities and methods of communication outlined below:

- Notification letters to surrounding Councils, Tweed Byron Local Aboriginal Land Council, Arakwal and state government agencies
- Public media, Council website, Facebook page and an e-newsletter to advertise engagement
- Provision of information including the RS and Background Report, FAQ and fact sheets, and information on how to lodge a submission
- Farmers markets stalls
- One-on-one meetings and responses to emails & phone calls

The report recommendations were workshopped with Councillors at a strategic planning workshop on 4 June 2020.

### Submission Profile

5

A total of 66 submissions were received including:

- State government agency response
- Community groups and broader community response
- 10 • Landowner request for inclusion as an investigation area

This report provides assessment and recommendations in relation to landowner requests for inclusion of land as an investigation area. These submissions are provided in Attachment 2.

- 15 The remaining submissions received during the exhibition period will be addressed in a further report to Council.

### Landowner request for inclusion as an investigation area

- 20 There were 19 requests for land to be included in the strategy as an investigation area.

As a result of an analysis as detailed in Attachment 1 a number of parcels were supported for inclusion as investigation areas in the strategy, these are listed below in Table 1:

- 25 **Table 1 Land parcels requests – supported as investigation areas.** For detailed assessment see Attachment 1.

Site # (Attachment 1)	Site Description
Site 4	Part of Lot 12 DP 527314 (20 Prince St Mullumbimby) due to Strategy investigation areas to the south east potentially contributing to this being a small pocket of isolated rural land within the Mullumbimby township.
Site 6	Lot 1 DP1256460, Lot 1 DP803292, Lot 2 DP1256460, Lot 2 DP803292, Lot 4 DP837851, Lot 5 DP1111848 (152 Stuart St, Mullumbimby & 124, 127, 130, 132, 134 Station St, Mullumbimby)
(Part) Site 10	Part of Lot PT32/1169053 located east of Tuckeroo Avenue, Mullumbimby
Site 16	Lot 3 DP1220608 (21 Ballina Road, Bangalow)

- 30 In line with Council resolution (**Res 19-636**) (Planning meeting 12 Dec 2019), these additional investigation areas will be included as part of the implementation of the SEPP 70 Affordable housing contribution scheme.

It is recommended that subject to Council endorsement of the lots identified above being included as an investigation area in the Strategy, staff exhibit these lands for a minimum 28 day period and report to Council any submissions received.

35

The balance of the requests for specific land parcels have not been supported and Table 2 summarises the site specific assessment outcomes for these parcels.

**Table 2 Land parcels requests – not supported as investigation areas.** Table 2 summarises the site specific outcomes for these parcels, for detailed assessment see Attachment 1.

Site # (Attachment 1)	Site Description	Recommendation
Site 1	Lots 1 & 2 DP 1126204 and Lot 7 DP 573269, 29 Buckleys Road, Tyagarah	That the proponent be advised that Lots 1 & 2 DP 1126204 and Lot 7 DP 573269 are excluded from further consideration as part of the investigation areas under the Residential Strategy due to inconsistency with the NCRP Settlement Guidelines and the policies and directions contained in the Byron Shire Draft Residential Strategy.
Site 2	Lot 2 DP 1032298 75 New City Road, Mullumbimby	That the proponent be advised that Lot 2 DP 1032298 is excluded from further consideration as part of the investigation areas under the Residential Strategy due to inconsistency with the NCRP Settlement Guidelines.
Site 3	Lot 1 DP 781835 1C Ann St Mullumbimby	That the proponent be advised that Lot 1 DP 781835 is excluded from further consideration as part of the investigation areas under the Residential Strategy due to inconsistency with the NCRP Settlement Guidelines and the policies and directions contained in the Byron Shire Draft Residential Strategy.
Site 5	Lot 2 DP 875011 142 Main Arm Road, Mullumbimby	That the proponent be advised that Lot 2 DP 875011 is excluded from further consideration as part of the investigation areas under the Residential Strategy due to inconsistency with the NCRP Settlement Guidelines and the policies and directions contained in the Byron Shire Draft Residential Strategy.
Site 7	Lot 4 DP 874348 1897 Coolamon Scenic Drive, Mullumbimby	That the proponent be advised that land Lot 4 DP 874348 is excluded from further consideration as part of the investigation areas under the Residential Strategy due to inconsistency with the NCRP Settlement Guidelines and the policies and directions contained in the Byron Shire Draft Residential Strategy.
Site 8	Lot 12 DP57826 and Lots 1 & 2 DP1187038 1862 Coolamon Scenic Drive, Mullumbimby	That the proponent be advised that Lot 12 DP57826 and Lots 1 & 2 DP1187038 are excluded from further consideration as part of the investigation areas under the Residential Strategy due to inconsistency with the NCRP Settlement Guidelines and the policies and directions contained in the Byron Shire Draft Residential Strategy.
Site 9	Lot 10 DP1132925 1982 Coolamon Scenic Drive, Mullumbimby	That the proponent be advised that Lot 10 DP1132925 is excluded from further consideration as part of the investigation areas under the Residential Strategy due to inconsistency with the NCRP Settlement Guidelines and the policies and directions

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.2

Site # (Attachment 1)	Site Description	Recommendation
		contained in the Byron Shire Draft Residential Strategy.
(Part) Site 10	Lot PT32/1169053 Tuckeroo Avenue, Mullumbimby	That the proponent be advised that part of Lot PT32/1169053 located west of Tuckeroo Avenue is excluded from further consideration as part of the investigation areas under the Residential Strategy due to inconsistency with the NCRP Settlement Guidelines and the policies and directions contained in the Byron Shire Draft Residential Strategy
Site 11	Part of Lot 162 DP1251169 Clays Road, Mullumbimby	That the proponent be advised that part of Lot 162 DP1251169 is excluded from further consideration as part of the investigation areas under the Residential Strategy due to inconsistency with the NCRP Settlement Guidelines and the policies and directions contained in the Byron Shire Draft Residential Strategy
Site 12	Lot 285 DP1198641 64 Corkwood Cr, Suffolk Park	That the proponent be advised that Lot 285 DP1198641 is excluded from further consideration as part of the investigation areas under the Residential Strategy due to inconsistency with the NCRP Settlement Guidelines and the policies and directions contained in the Byron Shire Draft Residential Strategy.
Site 13	Lot 350 DP 755695, Ewingsdale Road, Byron Bay	That the proponent be advised that part of Lot 350 DP 755695 is excluded from further consideration as part of the investigation areas under the Residential Strategy due to inconsistency with the NCRP Settlement Guidelines.
Site 14	Lot 22 DP 549688 139 Bangalow Road, Byron Bay	That the proponent be advised that Lot 22 DP 549688 is excluded from further consideration as part of the investigation areas under the Residential Strategy due to inconsistency with the NCRP Settlement Guidelines and the policies and directions contained in the Byron Shire Draft Residential Strategy.
Site 15	Lot 1 DP12330 Broken Head Quarry Site, Broken Head Rd, Suffolk Park	That the proponent be advised that Lot 1 DP12330 is excluded from further consideration as part of the investigation areas under the Residential Strategy due to inconsistency with the NCRP Settlement Guidelines and the policies and directions contained in the Byron Shire Draft Residential Strategy.
Site 17	Lot 100 & 101 DP 1158494 900 Bangalow Road, Bangalow	That the proponent be advised that Lot 100 & 101 DP 1158494 are excluded from further consideration as part of the investigation areas under the Residential Strategy due to inconsistency with the NCRP Settlement Guidelines and the policies and directions



Site # (Attachment 1)	Site Description	Recommendation
		contained in the Byron Shire Draft Residential Strategy.
Site 18	Lot 3 DP1164722 16 Bangalow Road, Bangalow	That the proponent be advised that Lot 3 DP1164722 is excluded from further consideration as part of the investigation areas under the Residential Strategy due to inconsistency with the NCRP Settlement Guidelines and the policies and directions contained in the Byron Shire Draft Residential Strategy.
Site 19	'Area 17' (RLUS) The Saddle Rd	That the proponent be advised that The Saddle Road area is excluded from further consideration as part of the investigation areas under the Residential Strategy due to inconsistency with the NCRP Settlement Guidelines and the policies and directions contained in the Byron Shire Draft Residential Strategy.

### **Summary and next steps**

This report recommends the inclusion of additional investigation areas in the Residential Strategy.

5 It is recommended that subject to Council endorsement, staff seek advice from the DPIE as to the requirement to further exhibit these lands and if advised to do so, that a 28 day public exhibition occur and be reported back to Council.

10 The remaining submissions received during the exhibition period will be addressed in a further report to Council.

## **STRATEGIC CONSIDERATIONS**

### **Community Strategic Plan and Operational Plan**

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
<b>Community Objective 4: We manage growth and change responsibly</b>	4.2	Support housing diversity in appropriate locations across the Shire	4.2.1	Establish planning mechanisms to support housing that meets the needs of our community	4.2.1.1	Finalise the Residential Strategy

### **Legal/Statutory/Policy Considerations**

The proposed actions are consistent with the relevant Commonwealth, State and Regional policy frameworks.

20 As the State Government has released North Coast Settlement Planning Guidelines 2019 clarification was sought on its application to the Residential Strategy. The DPIE advised that as Council had exhibited the draft residential strategy prior to the Department of Planning, Industry and Environment's release of the planning guidelines on 23 October 2019, compliance with the guidelines is not mandatory. It is however recommended that Council take into consideration the guidelines where possible when finalising the Strategy to ensure its strategic planning framework aligns with the North Coast Regional Plan 2036 and current best practice.

***Financial Considerations***

The cost of preparing the draft Residential Strategy has been met within Council's budget for this project. Additional funds may be required should Council decide to expand the scope of this project.

5

**Report No. 13.3      PLANNING - 26.2016.6 Update on The Farm at Ewingsdale Planning Proposal**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Rob Van Iersel, Major Projects Planner

**File No:** I2020/758

**Summary:**

Council considered a report on the progress of the Planning Proposal relating to The Farm at the Planning Meeting of 20 February 2020. At that meeting, staff reported that there had been considerable delay to the progress of the proposal associated with negotiations and discussions around traffic matters.

There are significant traffic issues at the western end of Ewingsdale Road, particularly relating to a lack of capacity at the motorway roundabout. Council and Transport for NSW (TfNSW) have discussed a range of potential actions but, as yet, TfNSW has no formal project to implement actions in the area.

As reported to the February meeting, it was not possible to negotiate a Voluntary Planning Agreement, which could have progressed with the Planning Proposal, to achieve an outcome suitable to all parties.

As an alternative, Council resolved (**20-026**) to seek an amended Gateway Determination for a proposal that would, in addition to providing an approval pathway for the existing unauthorised uses, rezone a 15m wide strip of land along the Ewingsdale Road frontage of the property from the current RU1 Primary Production to SP2 Infrastructure (Classified Road), effectively 'reserving' that land for future road widening.

This zoning would establish TfNSW as the authority responsible for acquiring the strip of land at some time in the future.

In response to this proposal, TfNSW advised that, as Council are the current roads authority for Ewingsdale Road, the SP2 zoning should be (Local Road), rather than (Classified Road), which would mean that Council becomes the acquisition authority.

This would impose a responsibility on Council to acquire the 'reserved' land, at some time in the future, in accordance with the provisions of the *Land Acquisition (Just Terms Compensation) Act 1991*.

The Department of Planning, Environment & Industry have been asked to confirm that public exhibition of the Planning Proposal could proceed based on the current Gateway Determination, if the reserved land were to be zoned SP2 Local Road rather than SP2 Classified Road.

In the meantime, further assessment is required to more clearly understand the appropriateness and implications for Council if it becomes the acquisition authority for the reserved strip of land along the Ewingsdale Road frontage of the property.

An alternative may be to proceed with the Planning Proposal without the SP2 zoning along the Ewingsdale Road frontage. That is likely to require an amendment to the current Gateway Determination and might not be supported by TfNSW.

The current Gateway Determination remains 'active' until October 2020. A report to Council will be provided prior to that expiring, to outline and assess the options in respect to this Planning Proposal.

In the interim, it is recommended that Council continue to suspend enforcement action in relation to matters subject of the Planning Proposal until such time as a determination is made.

5 **NOTE TO COUNCILLORS:**

- 10 In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

---

**RECOMMENDATION:**

**That Council:**

1. **Defers further action on the Planning Proposal pending a report outlining options and addressing the appropriateness and implications of a proposed zoning of SP2 Infrastructure (Local Road) for the strip of land along the Ewingsdale Road frontage of the property, and**
2. **Continues to suspend enforcement action in relation to matters subject of the Planning Proposal until such time as a determination is made. Council may, however, use its discretion to take enforcement action in circumstances where it is demonstrated that an unauthorised activity or use imposes significant impacts on the environment. This undertaking does not exclude Council from its regulatory obligations in relation to the Food Act, Local Government Act and Protection of the Environment Operations Act.**
3. **Notifies the proponent of its decision.**
4. **Writes to Transport for NSW requesting that work on traffic solutions for the western end of Ewingsdale Road is expedited.**

## REPORT

At the Council (Planning) Meeting of 20 February 2020, Council considered a report providing an update of the Planning Proposal for The Farm.

The Planning Proposal addresses existing unauthorised land uses at the Farm (it does not approve additional uses). Council had previously resolved (**17-671**) to initiate this Planning Proposal and seek a Gateway Determination from the Department of Planning that would allow for its public exhibition.

The support for the Planning Proposal was to allow authorisation of the following uses at the site:

- the bakery;
- agricultural training/education facilities and activities;
- administration offices;
- small-scale information centre.

Previous compliance action was undertaken to address the produce store, which was significantly reduced in scale to be consistent with the existing approval for 'roadside stall', and the homewares/gift shop, which was modified to operate in accordance with the approval for a plant nursery.

Prior to issuing a Gateway Determination for this Planning Proposal, the Department of Planning, Industry & Environment undertook preliminary consultation with a number of State Agencies. In response, Transport for NSW (TfNSW) recommended that a Voluntary Planning Agreement (VPA) be negotiated as part of the Planning Proposal, to provide for a contribution "*to offsetting the development's contribution to the traffic and safety issues around access to the site*".

The Department advised that this request from TfNSW be addressed prior to exhibition of the Planning Proposal.

As reported in February, considerable discussions were held with The Farm and TfNSW around a potential VPA, to provide for the dedication of a strip of land along the Ewingsdale Road frontage of the property, which would allow the future widening of Ewingsdale Road between the Motorway roundabout and McGettigans Lane.

While the VPA would not directly address traffic generation associated with the unauthorised uses at the property, it was considered that such dedication could be accepted as The Farm's contribution toward solutions for wider traffic issues.

Traffic associated with existing unauthorised uses at the Farm is not the cause of the traffic issues, but it does contribute to the problem. Previous discussions between Council, TfNSW and the proponent were centred on achieving the dedication of a strip of land along the Ewingsdale Road frontage of the Farm property, which was seen as a way in which The Farm could contribute to traffic solutions.

The February report noted that discussions were not able to reach a conclusion acceptable to all parties, and recommended that, instead, Council amend the Planning Proposal to rezone of a strip of land along The Farm's Ewingsdale Road frontage, to SP2 Infrastructure (Classified Road).

This zoning 'reserves' the land for future acquisition under the *Land Acquisition (Just Terms Compensation) Act 1991* process, and the Classified Road designation would nominate TfNSW as the authority responsible for the future acquisition.



The intention was to allow the Planning Proposal to move forward while Council and TfNSW continue to plan and design road improvement works which will address existing traffic issues.

5 In accordance with Council's resolution at that meeting (**20-026**), the Department of Planning, Industry and Environment was requested to issue an amended Gateway Determination.

In response, the Department requested confirmation that TfNSW supported the proposal and, in particular, would accept nomination as the acquisition authority for the SP2 land.

10 In response to this proposal, TfNSW advised that, as Council are the current roads authority for Ewingsdale Road, the SP2 zoning should be (Local Road), rather than (Classified Road), which would mean that Council becomes the acquisition authority.

15 This would establish a responsibility on Council to acquire the 'reserved' land, in association with implementing future road works in this area, or earlier if the land owner can establish "hardship" in accordance with the provisions of the *Land Acquisition (Just Terms Compensation) Act 1991*.

20 TfNSW advised that they could support the Planning Proposal on that basis, but they also advised that they would not be able to support any subsequent Development Applications that would follow in the absence of agreed traffic solutions and certainty around the implementation of those solutions.

25 The Department of Planning, Environment & Industry have been asked to confirm that public exhibition of the Planning Proposal could proceed based on the current Gateway Determination, if the reserved land were to be zoned SP2 Local Road rather than SP2 Classified Road.

30 In the meantime, further assessment is required to clearly understand the implications for Council in becoming the acquisition authority for the reserved strip of land along the Ewingsdale Road frontage of the property.

An alternative may be to proceed with the Planning Proposal without the SP2 zoning along the Ewingsdale Road frontage. That is likely to require an amendment to the current Gateway Determination and might not be supported by TfNSW.

35 The Gateway remains 'active' until October 2020. A report to Council will be provided prior to that expiring to outline and assess the options in respect to this Planning Proposal.

40 In the interim, it is recommended that Council continue to suspend enforcement action in relation to matters subject of the Planning Proposal until such time as a determination is made. Council may, however, use its discretion to take enforcement action in circumstances where it is demonstrated that an unauthorised activity or use imposes significant impacts on the environment. This undertaking does not exclude Council from its regulatory obligations in relation to the Food Act, Local Government Act and Protection of the Environment Operations Act.

#### 45 ***Legal/Statutory/Policy Considerations***

50 Moving forward with a zoning of SP2 Infrastructure (Local Road) establishes Council as the acquisition authority for the land. Acquisition of land is managed under the provisions of the *Land Acquisition (Just terms Compensation) Act 1991*. Section 23 of that Act provides that a land owner can trigger acquisition of the nominated land if they can demonstrate hardship associated with delay in the land being acquired. Hardship is defined under the Act.

#### ***Financial Considerations***

55 This is a land owner funded Planning Proposal.

***Consultation and Engagement***

Public exhibition of the Planning Proposal has not yet occurred, pending the outcome of discussions around traffic matters.

**Report No. 13.4**                      **PLANNING - Report of the 14 May 2020 Planning Review Committee**  
**Directorate:**                      Sustainable Environment and Economy  
**Report Author:**                  Chris Larkin, Manager Sustainable Development  
   Noreen Scott, EA Sustainable Environment and Economy  
5   **File No:**                            I2020/751

**Summary:**

10   This report provides the outcome of the Planning Review Committee (PRC) held on 14 May, 2020. Due to COVID-19, the PRC meeting was held partly via Skype with one Councillor attending in person. Of the four development applications reported to PRC, three are to be reported to Council for determination and one application remains with staff to determine under delegation.

15   **NOTE TO COUNCILLORS:**

20   In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

---

**RECOMMENDATION:**

25   **That Council endorses the outcomes of the Planning Review Committee meeting held on 14 May 2020.**

**REPORT**

The Planning Review Committee meeting scheduled for 14 May, 2020, was held via a Skype meeting with Councillor Ndiaye attending in person.

5

Councillors: Crs Hunter, Lyon, Cameron and Ndiaye

Apologies: Crs Coorey

10

Staff: Chris Larkin (Manager Sustainable Development)

The following development applications were reviewed with the outcome shown in the final column.

DA No.	Applicant	Property Address	Proposal	Exhibition Submissions	Reason/s Outcome
10.2020.61.1	Julian Rocks Developments Pty Ltd	7 Julian Rocks Drive BYRON BAY	Multi-Dwelling Housing comprising Ten (10) Dwellings	Level 2 20/2/20 to 11/3/20  13 submissions	Report to Council  Reasons: The number of public submissions.  The perceived public significance of the application.
10.2020.142.1	Planners North Pty Ltd	6 Strand Avenue NEW BRIGHTON	Demolition and Construction of New Commercial Premises	Level 2 9/4/20 to 29/4/20  27 submissions	Report to Council  Reasons: The number of public submissions.  The perceived public significance of the application.
10.2019.630.1	Kaisa Pty Ltd	7-9 Brownell Dr, Wategoes Byron Bay	Demolition of two exiting dwellings and construction of two attached dwellings in a dual occupancy	Level 2 9/1/20 to 7/2/20  1 Submission	Staff Delegation

15



# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.4

Council determined the following original development application. The Section 4.55 application to modify the development consent is referred to the Planning Review Committee to decide if the modification application can be determined under delegated authority.

DA No.	Applicant	Property Address	Proposal	Exhibition/ Submissions	Reason/s Outcome
10.2018.591.2	Argyle Street Developments Pty Ltd	28 Argyle Street MULLUMBIMBY	4.55 to Modify conditions 6 of consent being relating to development contributions	Level 0	Report to Council  Reason: The perceived public significance of the application.

5

**Report No. 13.5**      **PLANNING - Update Land & Environment Court Proceedings - DA 10.2019.458.1 Multi Dwelling Housing Comprising six (6) Dwellings at 6 Julian Rocks Drive Byron Bay**  
**Directorate:**      Sustainable Environment and Economy  
**Report Author:**      Luke Munro, Planner  
**File No:**      I2020/755

**Summary:**

On 30 August 2019 development application (DA) 10.2019.458.1 was received by Council. The DA sought consent for multi dwelling housing proposal comprising 8 dwellings in 3 separate buildings at 6 Julian Rocks Drive, Byron Bay. The application was made under the provisions of State Environmental Planning Policy Affordable Rental Housing (SEPP ARH) 2009.

The applicant lodged an appeal in the NSW Land & Environment Court in November 2019, against Council's "deemed refusal" of the application. Council subsequently resolved to refuse the application (**Res 19-632**) for the reasons set out in its notice of determination dated 12 December 2019.

As part of the Land & Environment Court proceedings, a without prejudice discussion was held on 1 May 2020, consisting of an online meeting and discussion of modified plans, facilitated by the legal representatives from both the Applicant and Council. The applicant has now submitted amended plans which have reduced the number of units to 6 addressing the reasons for refusals.

The reduction from 8 units to 6 units, has enabled the development to be redesigned in terms of satisfying Council's requirements for setbacks and building height plane encroachments, and providing a much more useable and functional private open space area for the rear units 5 and 6. Although not a contention or reason for refusal, an added consequential benefit from the redesigned development is that each unit will have a car parking space.

It is recommended that the General Manager be authorised to enter into consent orders or a Section 34 Conciliation Agreement to resolve the matter.


**NOTE TO COUNCILLORS:**

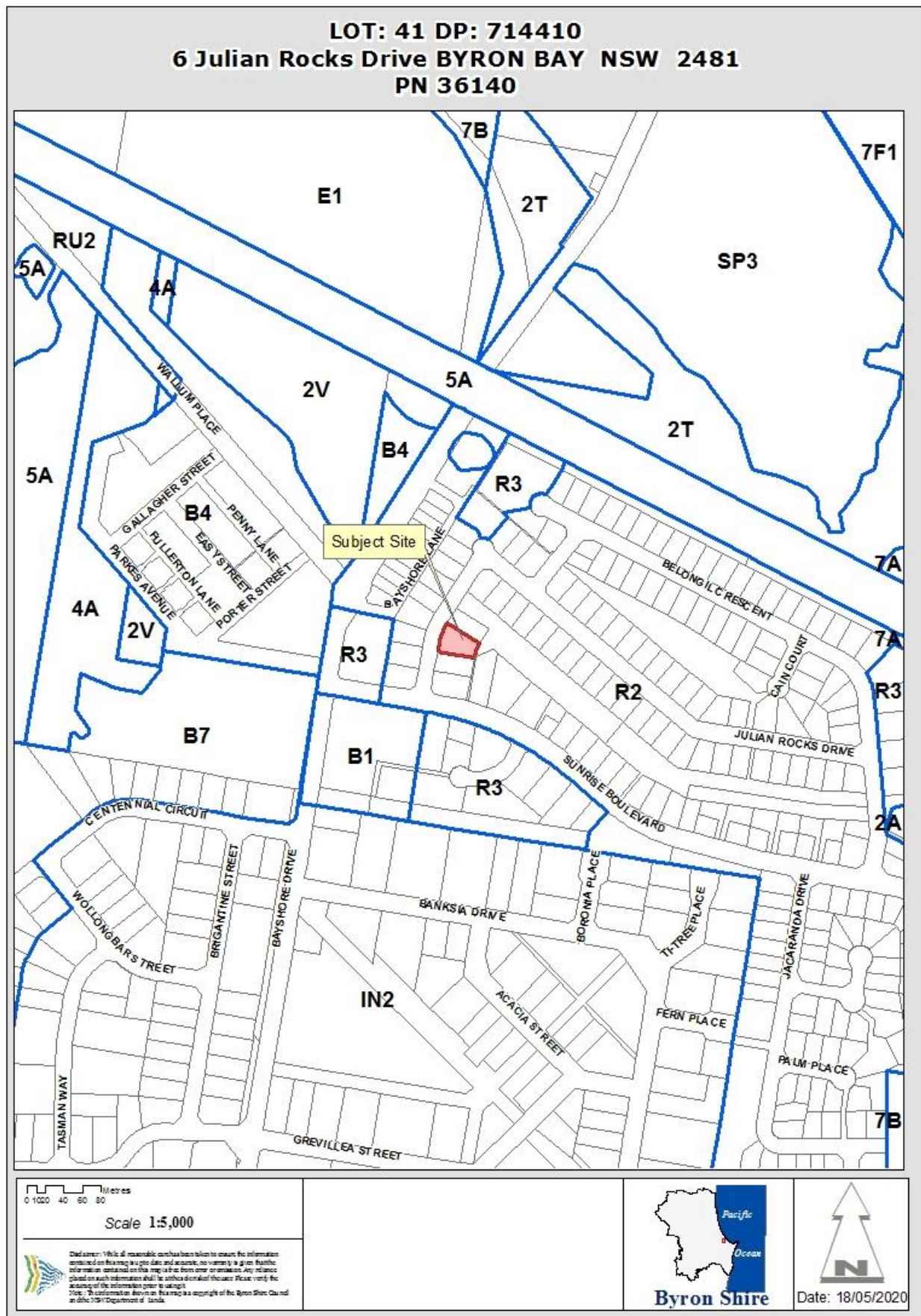
In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

**RECOMMENDATION:**

**That Council authorises the General Manager to enter into consent orders or a s34 Conciliation Agreement approving Development Application 10.2019.458.1, subject to appropriate conditions to be finalised under delegation.**

**Attachments:**

- 1      Revised Plans - 10.2019.458.1, E2020/41145 
- 2      Confidential - Submissions received - 10.2019.458.1, E2020/40965



**Assessment:**

**Land and Environment Court proceedings**

- 5 On 12 April 2019 proceedings were commenced in Class 1 of the Land and Environment Court by The Kollektive appealing against Council's "deemed refusal" of development application No. 10.2019.458.1 seeking consent for multi dwelling housing comprising 8 dwellings on the land at 6 Julian Rocks Drive, Byron Bay.
- 10 The proceedings were listed for a telephone directions hearing on 15 May 2017. On that day the Court listed the matter for a conciliation conference pursuant to section 34 (see below in Statutory and Policy implications) of the Land and Environment Court Act 1979 on 26 June 2020.
- 15 Given the circumstances which are set out in this report, delegation is sought for the General Manager to enter into a section 34 conciliation agreement or to go to a consent orders hearing as Council staff are of the opinion that Council's contentions in the Land and Environment Court proceedings are now addressed.

**Background**

- 20 On 30 August 2019 development application 10.2019.458.1(the DA) was received by Council. The DA sought consent for multi dwelling housing proposal comprising 8 dwellings in 3 separate buildings at 6 Julian Rocks Drive, Byron Bay. The application was made under the provisions of SEPP ARH 2009
- 25 The DA was publicly notified to nearby and adjoining residents between 12 September 2019 and 25 September 2019. Council received 21 objections (inclusive of 5 petitions with 289 signatures) raising objections to the DA.
- 30 The applicant lodged an appeal in the NSW Land & Environment Court in November 2019, against Council's "deemed refusal" of the application.
- Council refused the DA (**Res 19-632**) for the reasons set out in its notice of determination dated 12 December 2019:
- 35
1. Pursuant to Section 4.15(1)(a) of the *Environmental Planning and Assessment Act 1979*, the proposal is inconsistent with the provisions of *State Environmental Planning Policy (Affordable Rental Housing) 2009* in that:
    - 40 i. the units do not achieve adequate solar access and is inconsistent with the *SEPP (Affordable Housing) 2008*;
    - ii. the density and scale of the development is inconsistent with the character of the area; and
    - 45 iii. the proposed development is inconsistent with *Seniors Living Policy Urban design guidelines for infill development*.
  2. Pursuant to Section 4.15(1)(a) of the *Environmental Planning and Assessment Act 1979*, the proposal does not comply with the first objective of the R2 Low Density Residential Zone under Byron LEP 2014, in that:
    - 50 i. The proposed 8 dwellings is inconsistent with the character of a low density environment.

3. Pursuant to Section 4.15(1)(a) of the *Environmental Planning and Assessment Act 1979*, the proposal does not comply with Byron Development Control Plan 2014, in that:

- i. street boundary setbacks do not comply with the standard contained at Chapter D1.2;
- ii. the proposed development encroaches into the Building Height Plane on southern boundary, resulting in impacts on neighbouring residential properties;
- iii. inadequate useable private open space is provided to the units, with private spaces proposed within the front setbacks and overlapping private open spaces between units; and
- iv. the internal unit design does not provide adequate internal amenity for future residents

**The Amended proposal**

The amended application seeks development consent for a multi dwelling housing development, including 6 dwellings, in 3 standalone buildings each containing 2 units with common/shared driveway, car parking, circulation and landscaped areas. Each of the dwellings incorporates a 2 storey contemporary design. Access is proposed from a common driveway from Julian Rocks Drive through the centre of the site.

The dwellings are proposed to be clad in weatherboard walls with sheet metal roofing. Each dwelling is proposed to have a ground level yard with landscaped open space.

The units have been redesigned to:

- Reduce the number of units from 8 to 6 units (each 2 bedrooms);
- Remove the intrusions into the front setback;
- Remove BHP encroachments;
- Improve solar access to each unit;
- Remove issues of overlooking of private open space areas between units;
- Improve privacy for neighbouring sites by either removing first floor windows looking towards side boundaries (Units 5 & 6) and providing privacy screening (textured glass) to first floor windows (Units 1-4);
- Improve the ability of vehicles to manoeuvre within the internal parking area; and
- Increased the front crossover width to allow vehicles to pass.

Dwellings 1-4 will have an area of 70m<sup>2</sup> GFA with Units 5 & 6 being slightly larger at 84m<sup>2</sup> GFA. Each dwelling will have a private garden area.

Six (6) parking spaces are provided, one for each of the 6 units. This is an improvement on the original design which provided only 6 spaces for a total of 8 units.



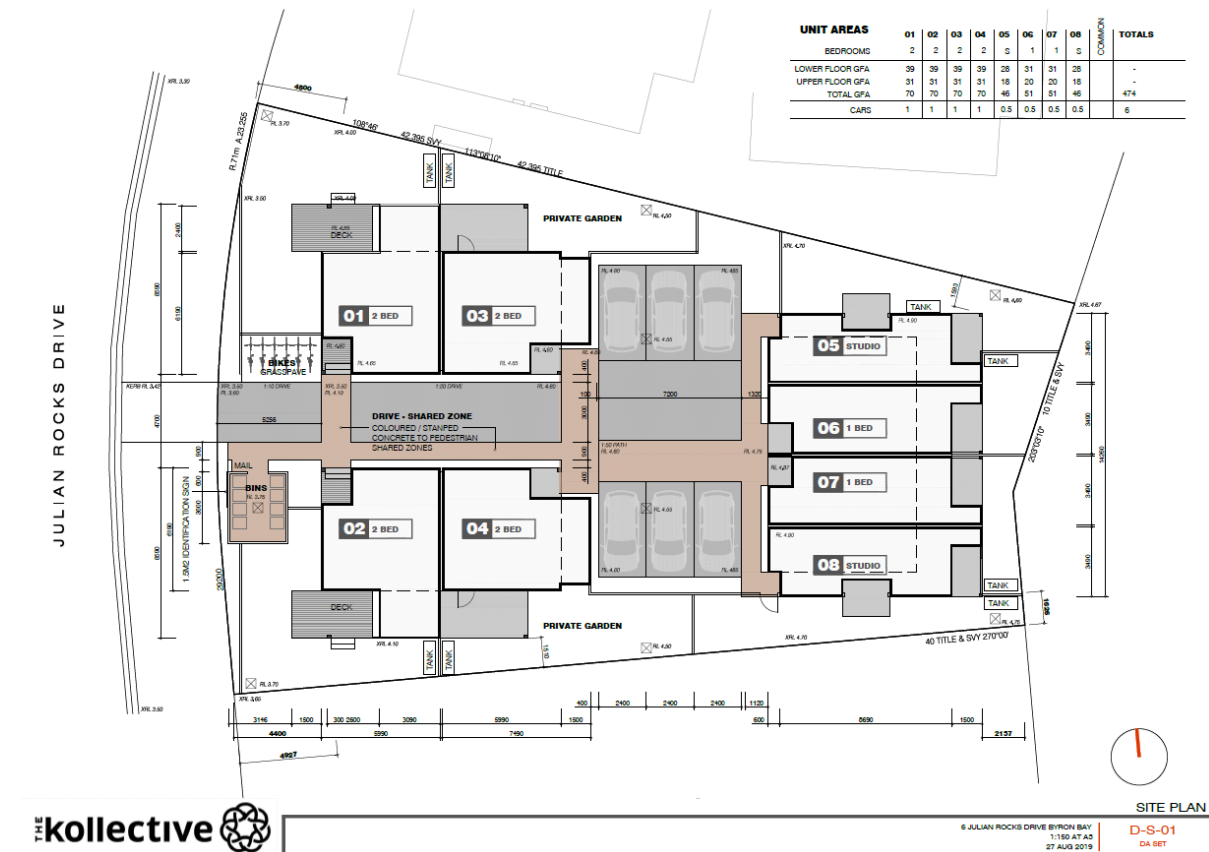


Figure 1: Site Plan - as lodged

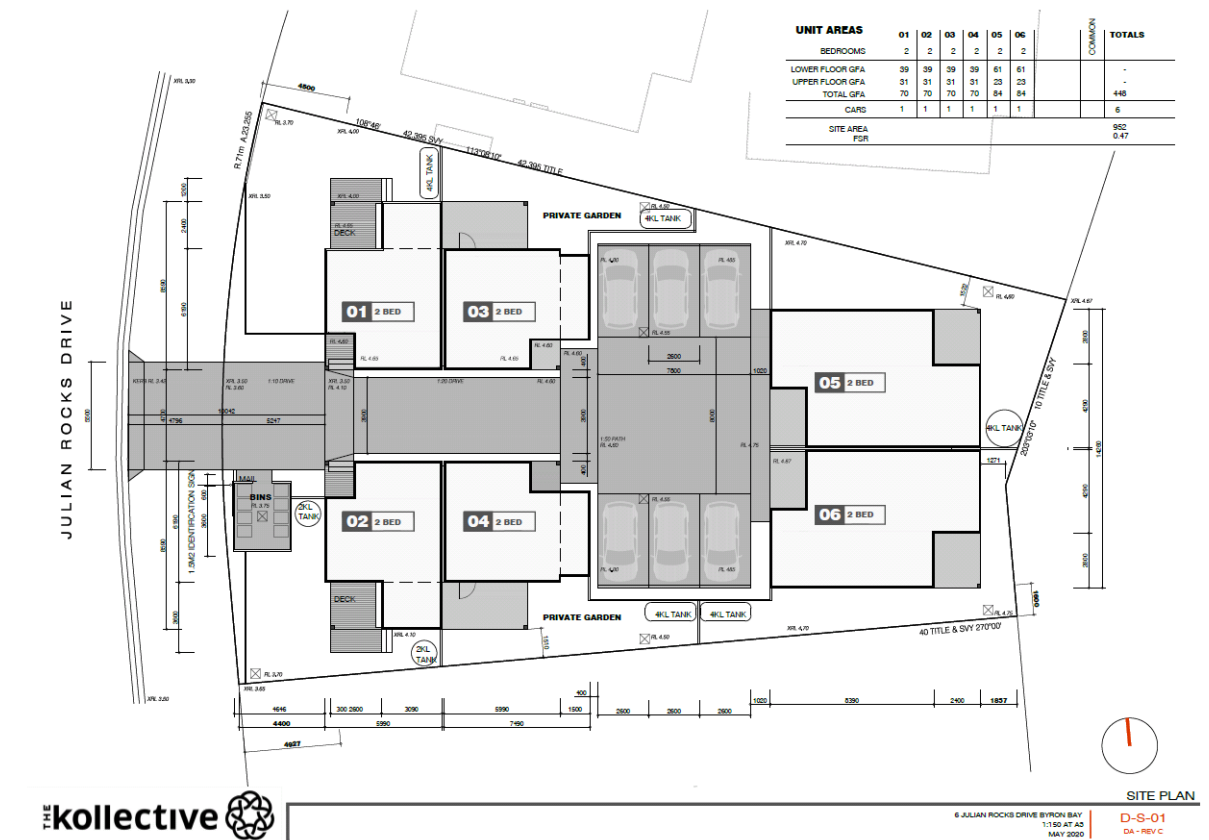


Figure 2: Site Plan – Amended Proposal



Figure 3: Perspective – Amended Proposal

**The site**

5

Land is legally described	LOT: 41 DP: 714410	
Property address	6 Julian Rocks Drive BYRON BAY	
Land is zoned:	R2 Low Density Residential	
Land area is:	951.7 m <sup>2</sup>	
Property is constrained by:	Acid Sulfate Soils Class 3	
	Is a BDAR required due to the location of the proposed development?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Are there any easements in favour of Council affecting the site?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Vegetation Management Plan which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Voluntary Planning Agreement which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

10 The property is known as Lot 41 DP714410 and is located at 6 Julian Rocks drive, Byron Bay. It is irregular in shape with a 23.25m slightly curved primary frontage which tapers to 16.72m wide at the rear. The property is 951.7m<sup>2</sup> and is oriented roughly east / west. The western boundary, which is the Julian Rocks Drive frontage, has a length of 23.25m. The eastern boundary backs onto a public reserve, with a length of 16.72m.

15 The property currently contains a single dwelling with attached garage. There is no substantial vegetation on the land, other than landscape plantings.

**The locality**

20 The subject site is flat land located within the Sunrise Residential Estate. Julian Rocks Drive provides a local access loop for movement through the Sunrise Residential Estate, which was developed from the mid 1980s onwards.

The residential character is currently dominated by single storey dwellings and dual-occupancies directly adjacent to the site. There are a number of 2 storey developments to the north of the site between 50m - 100m which are 2 storeys.

- 5 More variety exists to the southern side of Sunrise Boulevard, primarily in the form of multi-dwelling housing and dual occupancy developments. The area to the south of Sunrise Boulevard are appropriately zoned as medium density residential R3 for multi-dwelling housing. The dwellings in this area remain, however, a mixture of 1 and 2 storeys in height.

10 **Council's contentions in the proceedings**

***State Environmental Planning Policy Affordable Rental Housing (SEPP ARH) 2009***

The original proposal is inconsistent with the provisions of SEPP ARH in that:

- 15 i. the units do not achieve adequate solar access and is inconsistent with the *SEPP*;  
 ii. the density and scale of the development is inconsistent with the character of the area; and  
 20 iii. the proposed development is inconsistent with *Seniors Living Policy Urban design guidelines for infill development*.

***Particulars***

The original development does not achieve minimum requirements under the SEPP ARH 2009 for:

- 25 a. **solar access** – the development did not achieve the minimum of 70% of dwellings with adequate solar access;  
 b. **density** in the vicinity of the site is generally comprised of low density residential development comprising of dwelling houses and dual occupancy development ; and  
 30 c. the development did not achieve minimum design requirements taking into consideration the provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development published by the Department of Infrastructure, Planning and Natural Resources in March 2004*

***The amended proposal resolves the above by:***

**Solar Access:**

- 35 In relation to solar access (Clause 14(1) (e) of the SEPP ARH 2009), Council must not refuse development made under Division 1 if living rooms and private open spaces achieve a minimum of 70 per cent of a development's dwellings and receive a minimum of three hours direct sunlight between 9am and 3pm in mid-winter.

- 40 The amended development now provides adequate solar access to the living rooms and private open space areas to the majority of units with the exclusion of unit 6 which achieves solar access to the private open space area but not direct sunlight into the dwelling living room.

- 45 The amended proposal provides 83% (5 of 6 units) of the units with adequate solar access to living rooms and private open space areas. The amended layout **achieves the minimum of 70% of the dwellings with adequate solar access.**

**Density**

- 50 The amended proposal is not typical of a "low density residential environment" as it proposes multi dwelling houses at a density of 1 dwelling per 158m<sup>2</sup> while the prevailing density of the low density zone for the Shire may more readily equate to 1 dwelling 600 m<sup>2</sup> (in accordance with the minimum lot size map).

However, the application has been submitted under the SEPP ARH which allows for in-fill affordable housing in locations within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use.

BLEP 2014 - Clause 4.1E Minimum lots sizes for dual occupancies, multi dwelling housing and residential flat buildings allows for multi dwelling housing on lots with an area of 1,000m<sup>2</sup>. This requirement is inconsistent with clause 14(1) of SEPP ARH, which sets a minimum site area of 450m<sup>2</sup> (The subject site has an area of 951.7m<sup>2</sup>). The provisions of the SEPP ARH prevail in respect of any inconsistency and therefore multi dwelling housing is acceptable on this site in accordance with the SEPP ARH.

The amended proposal has reduced the GFA of the development with the development now complying with Clause 4.4 Floor space ratio of the BLEP 2014. The FSR specified for the locality is 0.5:1. Although a FSR 'bonus' of 0.2:1 is available under the provisions of SEPP ARH. The amended proposal has a complaint FSR of 0.47:1.0 with the LEP controls.

Given the reduction of dwelling units from 8 to 6 dwellings and modifications to remove the building height plane intrusions and modifications to improve the privacy of neighbouring properties the development will be more in keeping with the overall character of the area.

**Provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development***

The amended proposal has addressed the following provisions of the Seniors Living Policy: Urban Design Guidelines for Infill Development:

Part 1 – Responding to context

The amended proposal is generally consistent with existing character in terms of scale and density. The design is broken into 3 separate buildings with the site appearing as 2 x 2 storey dwellings when viewed from Julian Rocks Drive.

Part 2 – Site Planning & Design

The amended design removes the previous building height plane encroachment and resolves privacy issues through the removal of overlooking windows and fixed textured/opaque glass screening

Part 4 – Impacts on neighbours

The amended plans will not result in the development breaching the building height plane or result in on privacy impacts to adjoining neighbours.

Part 5 Internal site amenity

The development now provides adequate useable private open space for each of the dwellings.

**Character**

The original proposal did not comply with the first objective of the R2 Low Density Residential Zone under Byron LEP 2014, in that:

- i. The proposed 8 dwellings is inconsistent with the character of a low density environment.

## Particulars

The original development application should be refused because the proposed development, as a result of its scale, density and design, is inconsistent with the character of the locality.

### The amended proposal

The amended proposal is now at a scale and density, which is more consistent with the character of the locality. The development will appear from the street as two separate buildings not dissimilar to two storey dwelling houses.



Figure 4: Appearance of 2 dwellings from Julian Rocks Drive

The residential character is currently dominated by dwelling houses and dual-occupancies directly adjacent. There are a number of 2 storey developments to the north of the site between 50 -100m which are 2 storey. The proposed development at 2 storeys will not be out of character in this area and is consistent with the 9 metre height limit established under the Byron LEP 2014.

As discussed above more variety exists to the southern side of Sunrise Boulevard, primarily in the form of multi-dwelling housing and dual occupancy developments. The area to the south of Sunrise Boulevard are appropriately zoned as medium density residential R3 for multi-dwelling housing. Similarly to the west on Bayshore Drive, higher residential density development exists. The dwellings in this area remain, however, a mixture of 1 and 2 storeys in height.

### Street Boundary Setbacks

The proposal does not comply with Byron Development Control Plan (DCP) 2014, in that:

- i. street boundary setbacks do not comply with the standard contained at Chapter D1.2;



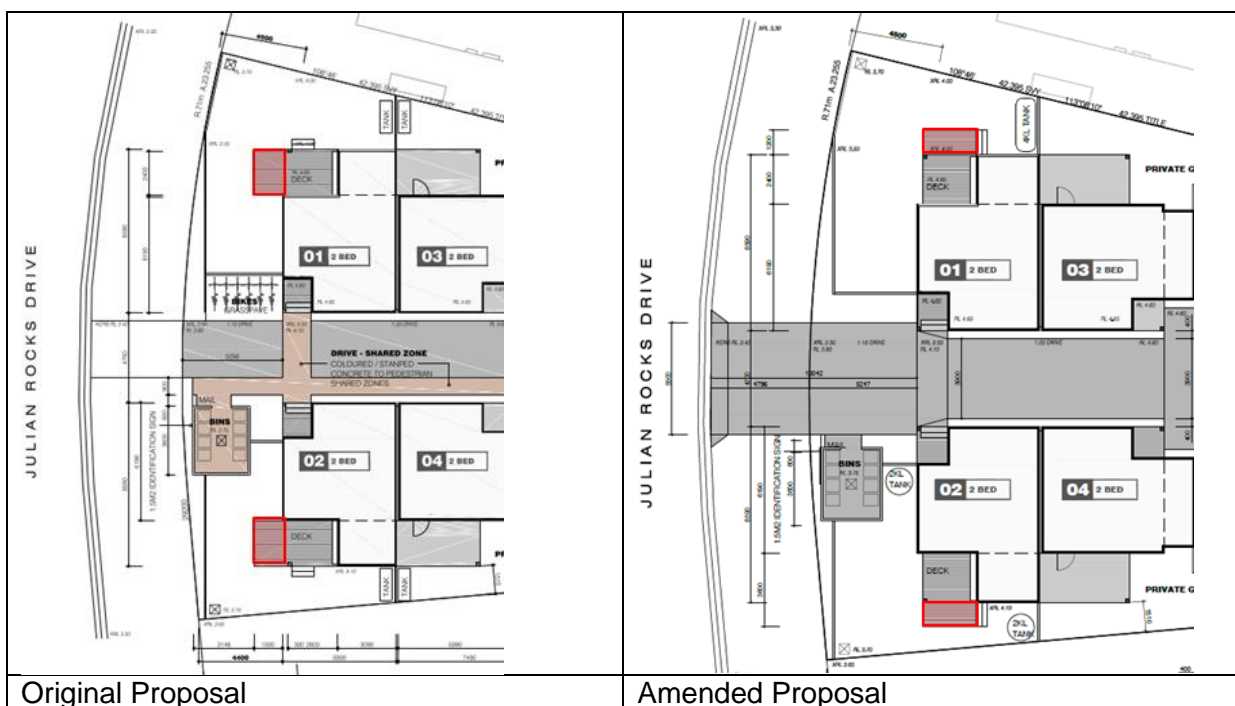
## Particulars

The majority of existing dwellings fronting the eastern side of Julian Rocks Drive have a front setback of between 4.8m and 6.0m and the setback is consistently greater than the minimum of 4.5m setback required under the DCP 2014.

The original proposal had units fronting onto Julian Rocks Drive which included a deck structure which protruded into this setback area, set at between 2.7m and 3.1m from the street frontage.

## The amended proposal

The amended proposal has now removed the deck structures from within the front setback with setbacks of between 4.5m and 5.2m which fully comply with the requirements of D1.2.2 Setbacks from boundaries.



## Building Height Plane

The proposal does not comply with DCP 2014, in that:

- ii. the proposed development encroaches into the building height plane on southern boundary, resulting in impacts on neighbouring residential properties;

## Particulars

The proposed development encroaches into the building height plane on southern boundary

The amended proposal does not encroach into the building height plane and will reduce impacts on neighbouring properties in terms of maintaining solar access.

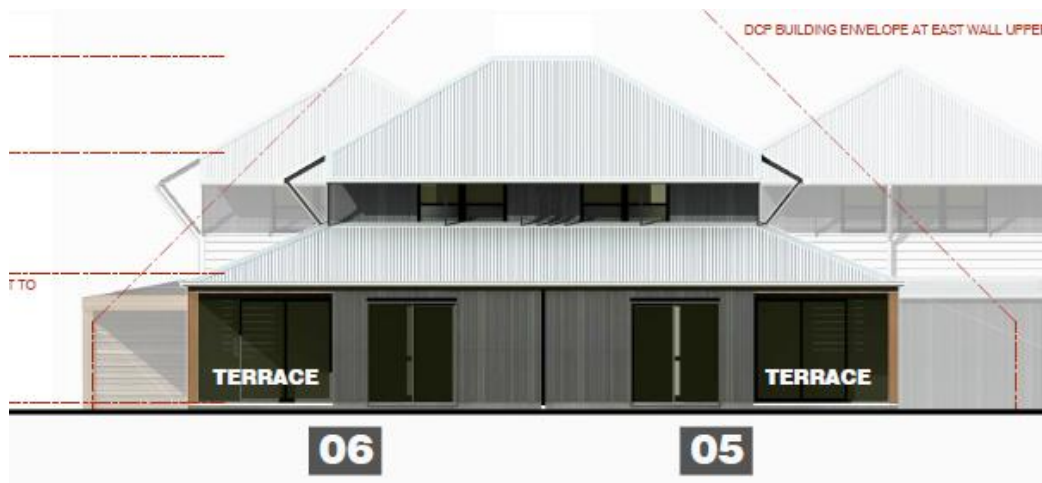


Figure 5: Amended proposal – no BHP intrusion

### Private Open Space

The original proposal does not comply with DCP 2014, in that:

- i. inadequate useable private open space is provided to the units, with private spaces proposed within the front setbacks and overlapping private open spaces between units.

### Particulars

The private open space area of units 6 and 7 overlap and overlook the private open space areas to units 5 and 8.

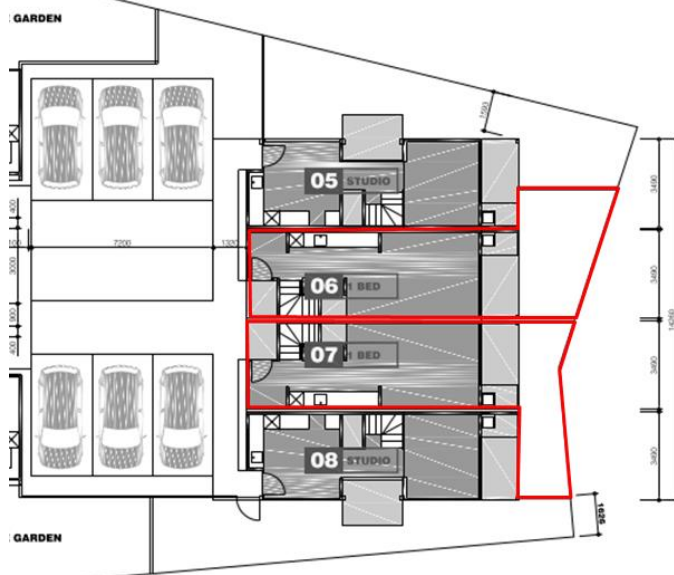


Figure 6: Original DA - Overlapping POS areas to Units 5 & 8

The amended proposal has removed private open space areas from within the front setbacks as discussed above. The reduction in units at the rear of the site has removed the overlapping private open space between units thus providing for a more functional and usable area of open space for Units 5 and 6.

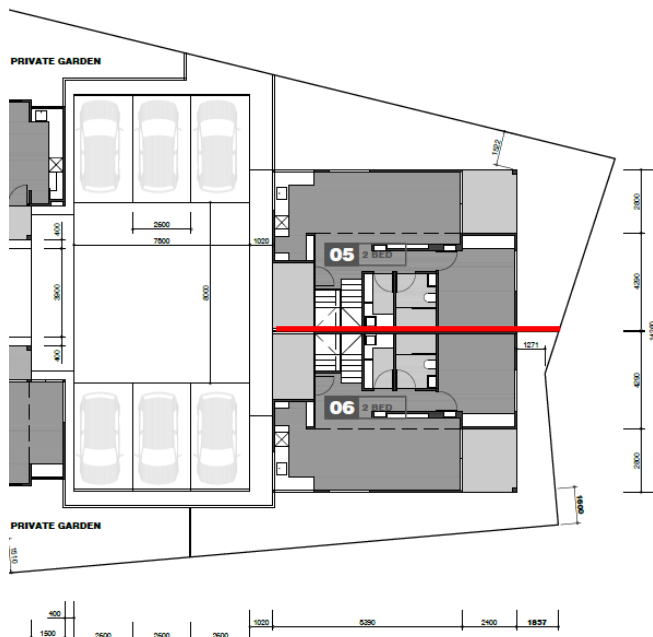


Figure 7: No overlapping of POS areas

### Inadequate internal floor area

- 5 The proposal does not comply with the SEPP ARH and the internal unit design does not provide adequate internal amenity for future residents

### Particulars

- 10 The original proposed development had incorrectly classified the proposed studios, which are one-bedroom dwellings. The proposed 'studios' as previously proposed were below the required 50m<sup>2</sup> for a 1 bedroom dwelling under the SEPP ARH with a gross floor area of 46m<sup>2</sup> for each of the 2 'studio' dwellings when considered as 1 bedroom dwellings.
- 15 The amended proposal has now reduced the number of dwellings from 8 to 6 dwellings. Each dwelling will now contain 2 bedrooms. Under the SEPP ARH the minimum gross floor area for a 2 bedroom dwelling is 70m<sup>2</sup>.
- 20 All proposed dwellings have a minimum of 70m<sup>2</sup> gross floor area which now complies with the minimum dwelling size for a 2 bedroom dwelling.

### Public interest

- 25 The development application should be refused because the proposed development is not in the public interest having regard to the nature and number of submissions received objecting to the proposal and the Contentions listed above.

### Amended plans

- 30 The applicant has submitted amended plans which have been considered by Council staff. Most of the matters raised in objections have been addressed in the amended proposal as it complies more readily with the provisions of the SEPP ARH, LEP 2014, DCP 2014 and Council's development related policies.
- 35

**Public Exhibition**

- 5 The amended proposal was re-notified (by Council solicitors) to all who had made previous submissions, with an exhibition period from 21 April to 13 May 2020. There were 11 submissions made in relation to the amended proposal all objecting.

<i>Re-exhibition of amended plans April/May 2020:</i>	
Submission	Comment
<p><b>Over development and Character of the Local Area</b></p> <p>The proposal for 6 units continues to be an overdevelopment of the site and fails to meet both the provisions set out in LEP 2014 and SEPP ARH.</p>	<p>The residential character of the neighbourhood is dominated by dwelling houses and dual-occupancies. In surrounding streets of Sunrise Boulevard and Bayshore Drive the residential density increases consistent with medium density forms for Byron Shire.</p> <p>With the reduction of units from 8 to 6, the separation of the development into three building with two units each, a compliant floor space ratio and height limit with the LEP 2014 provisions, it is considered the proposal is not an overdevelopment of the site and permitted under the SEPP ARH.</p>
<p><b>Privacy</b></p> <p>The 2 storey nature of the proposed development will have a negative impact upon my client's privacy in their rear/side yard area (located on their northern boundary).</p> <p>There will be a degree of overlooking from the second storey level of proposed Units 2 &amp; 4.</p>	<p>The amended plans remove first floor windows looking onto adjoining properties to the north and south to unit 5 &amp; 6.</p> <p>Units 1-4 have been amended to provide 1.5m fixed textured glass window panels on the first floor looking over adjoining properties to maintain privacy for all existing residents.</p>
<p><b>Traffic and Parking</b></p> <p>The proposal provides for 6 units with 6 car spaces. While this meets the minimum requirements of the SEPP this number of car spaces is far below the number of car spaces needed within a unit complex of this nature.</p> <p>The street is just over 7metres wide with most average cars, vans &amp; work vehicles being 1.8 - 2mtrs in width and then buses 2.60mtrs it becomes a one way street then you have The garbage trucks.</p>	<p>Council cannot refuse the application based on car parking as it complies with the minimum parking requirements of the SEPP ARH.</p>
<p><b>Affordable Housing</b></p> <p>It is unclear from the revised proposal whether affordable housing will be provided in the development.</p>	<p>The development will be conditioned to provide for an affordable housing unit. The applicant has nominated unit 6 for this purpose.</p>
<p><b>Vegetation Removal</b></p> <p>The proposal provides for the removal of a</p>	<p>A small number of shrubs will be required to be removed for the driveway. This vegetation to be removed is considered to be 'planted</p>

substantial strand of trees located along the frontage to Julian Rocks Drive.	vegetation'.
<p>Precedence of the form of development in Sunrise Estate</p> <p>This proposal is likely to set precedence for this form of development within the Sunrise Estate and is likely to compound the negative issues of over development, loss of character of the Sunrise Estate, privacy and amenity concerns and traffic and car parking issues.</p>	<p>The development applied for under the SEPP ARH is only applicable to those sites within a400m walk from a B2 Local Centre or Zone B4 Mixed Use zone. The ability to apply for further development under the SEPP ARH is otherwise limited within the estate.</p>
<p>Landscaping and Privacy</p> <p>a. Reduction in Deep Soil Planting The amended plans provide for a reduction in landscaped area for Unit 4 from 37m2 to 35m2 and a substantial reduction in deep soil planting area from 30m2 to 20m2.</p> <p>Provision of screen planting in courtyard to Unit 4 and Unit 2 along southern boundary and fencing.</p>	<p>The site provides adequate deep soil planting in accordance with the DCP 2014.</p> <p>The site provides for planted shrubs and trees along all site boundaries to assist in screening the development from adjoining properties.</p>
<p>Relocation of Bicycle Parking</p> <p>The amended plans show the relocation of the bicycle parking area along the common boundary to my client's site, next to proposed Unit 4.</p>	<p>The bike parking has been removed from the central location. Given that each unit will have a large private open space area, each unit will be able to store a bike within their own outdoor areas individually.</p>
<p>Gross Floor Area</p> <p>The gross floor area of 438m2 includes the area for a stairwell. Stairwells are not classed as living space. This needs adjustment.</p>	<p>Each unit has the minimum required gross floor area as defined under the SEPP ARH.</p>
<p>Inadequate Public Transport</p> <p>Limited bus service only is available to the Sunrise Beach area. Blanches Bus Services run limited bus services to Mullumbimby &amp; to the north of the Shire that would make working in these areas difficult or impossible to access.</p>	<p>Noted.</p>
<p>Inclusivity of All Community Members.</p> <p>The units are all 2 storey with tight spiral stairwells. They do not provide easy access for young families with small children, or the elderly &amp; no access for the disabled.</p>	<p>A condition of approval recommends provision of an accessible/adaptable unit in the development.</p>
<p>Adjustments in Amended DA</p> <p>The amended DA only shows minor changes to the original DA by reducing four units numbered 5, 6, 7 &amp; 8 on the original plans to 2 units, numbered 5 &amp; 6 on the amended plans. Four (4) units comprising 2 undersized studios &amp; 2 single bedroom units have been converted to 2</p>	<p>There are no requirements under the SEPP ARH or the LEP 2014 or DCP 2014 to limit the number of occupants per bedroom.</p>



<p>x 2 bedroom units that occupy the same amount of space at ground level as the original design. The proposed density of people living in the units has <u>not</u> decreased with these changes. No limits appear to have been placed on occupant numbers of the two bedroom units. I thought that this would be a requirement of the Affordable Housing SEPP?</p>	
<p>Limited Social Benefit</p> <p>The developer applies under the terms of SEPP ARH. In this way, site capacity (and hence financial return) can be maximised, and local zoning does not apply to the development.</p> <p>However, the developer is not a social housing provider, and units offered as Affordable Housing will revert to market rental rates after 10 years.</p>	<p>Noted.</p>

### **Financial implications**

- 5 The estimated professional legal costs of defending the appeal are \$10,780 excluding GST, assuming that the hearing in the matter only takes 1 day. If the hearing takes longer the legal costs will be higher.

### **Statutory and Policy Compliance Implications**

#### **10 Section 34 Conferences**

Conciliation in the Court is undertaken in accordance with Section 34 of the Court Act (otherwise known as a Section 34 Conference).

- 15 Section 34 Conferences, as articulated by the Chief Judge in (2008) 19 ADRJ 72, provide: “for a combined or hybrid dispute resolution process involving first, conciliation and then, if the parties agree, adjudication. The conciliation involves a Commissioner with technical expertise on issues relevant to the case acting as a conciliator in a conference between the parties. The conciliator facilitates negotiation between the parties with a view to their achieving agreement as to the resolution of the dispute. If the parties are able to reach agreement, the conciliator, being a Commissioner of the Court, is able to dispose of the proceedings in accordance with the parties’ agreement.”

- 20 The Court’s practice note encourages parties to consider using Section 34 Conferences to resolve disputes or narrow the scope of issues in dispute. The parties should properly prepare for each conference with this purpose in mind.

- 25 In accordance with Section 34(1A) of the Court Act it is the duty of each party to proceedings where a conciliation conference has been arranged to participate, in good faith, in the conciliation conference.

#### **Conciliation Agreement/Consent Orders**

- 30 The differences between finalising the Court proceedings via a Conciliation Agreement compared to Consent Orders are as follows:

1. A Conciliation Agreement is between Council and the applicant ie Council stays the determining authority.

5 Use of a Conciliation Agreement would bring the Court cases to an end immediately and without the need for Council to include any expert witness costs or any legal costs beyond the minor costs associated with finalising the Conciliation Agreement.

10 2. Consent Orders are Orders issued by the Court by agreement ie the Court becomes the determining authority and has the power to refuse to issue the orders the parties are asking for and/or to make different orders instead. With a Consent Orders hearing, everything, including the proposed conditions, is open to the Court to finally determine and, for example, a Commissioner might disagree with proposed conditions and issue orders with different conditions.

15 Because the Court becomes the determining authority, Consent Orders will not be entered by the Court without a hearing. That means a hearing would need to be held (usually commencing on-site then adjourning to a local Court house) and solicitors, expert witnesses and people who lodged an objection who wished to make a verbal submission to the hearing would have to attend, and Council would incur the associated legal and witnesses costs.

20 Usually, Consent Orders Hearing are shorter than defended hearings, often only 2 - 4 hours instead of the minimum full day hearing or more, but the hearing still needs to be prepared for and attended, just like a defended hearing would be, which means that the vast majority of the costs are still incurred.

25 Due to the reduced certainty and the higher costs, this is usually not the option recommended by staff for disposal of the court cases where Conciliation Agreement option is still available, as is the case here.

30

### **Conclusion**

35 The amended proposal presented at the without prejudice meetings to date provides for a development that addresses the reasons for refusal. The reduction from 8 units to 6 units, has enabled the development to be redesigned in terms of satisfying Council's requirements for setbacks and building height plane encroachments, and providing a much more useable and functional private open space area for the rear units 5 and 6. Although not a contention or reason for refusal, an added consequential benefit from the redesigned development is that each unit will have a car parking space.

40

On the basis of these amended plans, it is recommended that the General Manager be authorised to enter into consent orders or a Section 34 Conciliation Agreement to resolve the matter.

**Report No. 13.6**      **PLANNING - Byron Bay Arts & Industry Estate Precinct Plan and Lot 12 - Submissions Report**  
**Directorate:**      Sustainable Environment and Economy  
**Report Author:**      Rob Van Iersel, Major Projects Planner  
**File No:**              I2020/813

**Summary:**

In December 2018, Council resolved to engage consultants HIP V HYPE to facilitate an Enquiry by Design (EbD) process, as a first step in the preparation of a Precinct Plan for the Byron Arts and Industry Estate (**Res 18-817**).

The two-day EbD workshop was held in April 2019, with eight key community stakeholders attending for the full two days, along with a mix of technical experts, Council staff and Councillors. The process was extremely productive, with great enthusiasm, creativity and intellect shown by the entire group.

In September 2019, Council resolved (**Res 19-452**) to endorse the draft Precinct Plan for the Arts and Industry Estate for the purposes of public exhibition. That exhibition was undertaken in April 2020 and has now concluded.

The exhibition also included a number of structure plan options for Council-owned Lot 12 Bayshore Drive, to seek feedback on land uses and ideas for the future development of that lot.

A copy of the submissions received and the Draft Masterplan are attached to this report. Issues raised in the submissions have been discussed in the body of this report.

Based on the feedback it is considered that there is no need to amend or adjust the draft Precinct Plan as exhibited. Most of the submissions contained ideas and commentary that will be relevant in moving forward with the recommended actions. It is recommended that Council adopt the Masterplan, which will facilitate planning for the delivery of actions.

**NOTE TO COUNCILLORS:**

In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

---

**RECOMMENDATION:**

- 1. That Council adopts the Byron Bay Arts & Industry Estate Precinct Plan as contained in Attachment 1 (E2020/21932)**
- 2. That Council staff commence work on planning for the implementation of actions and put through any budget bids required for these actions at the relevant time through the annual budget review process.**
- 3. That Council staff continue to refine the desired land uses, design principles and delivery options for Lot 12 and report to the earliest available Council meeting.**

**Attachments:**

- 1 Final Draft Byron Arts & Industry Estate Precinct Plan, E2020/21932 
- 2 Confidential - Community Submissions Precinct Plan and Lot 12, E2020/40670
- 5 3 Agency Submissions Draft Precinct Plan, E2020/40753 

**REPORT**

At the Council Planning meeting of 19 September 2019, Council resolved (**19-452**) to endorse the draft Precinct Plan for the Arts and Industry Estate for the purposes of public exhibition. The resolution also included a request “that staff accelerate the preparation of a Structure Plan for Lot 12 concurrent with the finalisation of the Draft Precinct Plan”.

Subsequent to the resolutions, Council was approached by TAFE NSW to lease part of Lot 12 to allow them to establish a Connected Learning Centre at the site. The TAFE request is for an area of approx. 5,000m<sup>2</sup> at the Bayshore Drive frontage of the site.

In line with the September resolution, consultants were engaged to prepare three structure plan options for Lot 12, including one option accommodating the TAFE request. The intent of developing the options was to assist Council in determining desired future uses at the site and how development of those uses might be delivered.

Council considered the structure plan options and the TAFE NSW request at the Planning Meeting of 16 April 2020 and resolved (**20-161**):

1. *That Council waits until the conclusion of the enquiry by design process including public exhibition report on the structure plan options and draft arts and industry estate precinct plan being presented to Council for endorsement before decisions on anchor tenants are reached.*
2. *That Council reiterates its support for TAFE and the creation of a physical presence of TAFE in Byron Bay.*
3. *That Councillors are provided a presentation on possible outcomes on Lot 12 at a SPW to be held within the timeframe of the conclusion of 1 above.*
4. *That Council undertake discussions with other educational and research entities to ascertain interest in establishing a wider collaborative education and research precinct.*
5. *That Council acknowledges and reiterates a current resolution for this site as being a precinct of education, innovation and creative industries.*

**Public Exhibition**

Exhibition of the draft Arts and Industry Precinct Plan and the Lot 12 structure plan options occurred from 29 April to 26 May 2020. Engagement included social and traditional media, a Your Say page on Council's web page, posters distributed through the Estate, letters to owners and an on-line information forum.

**Submissions**

In response to the engagement, Council received:

- a total of 27 submissions (see Attachment 2);
- 17 of these provided commentary only on the draft Precinct Plan;
- 4 commented only on Lot 12;
- 6 provided comments for both
- 2 of the submissions were from Community Groups;
- 8 from businesses; and
- 14 from individuals.

State Government Agencies were also consulted, with 3 responses received (see Attachment 3).



**Key issues**

The feedback in general was largely positive, with many applauding the intended outcomes of the plan. Some key features that gained support were:

- 5 • the trial of one-way traffic circulation in Centennial Drive as a pilot project to address access issues;
- a focus on a range of actions to provide alternate transport options;
- actions to deliver bike/ pedestrian paths and connections; and
- 10 • recognition of the vitality and diversity of the Estate and actions to protect and build on those values.

In relation to Lot 12, feedback generally supported the creation of a diverse innovations hub on the property, with a range of suggestions for the land uses that might be involved in such a hub.

**15 Draft Precinct Plan:**

Generally, there was support for the Precinct Plan in providing a blue-print for the future of the estate, including recognition of the existing strengths, primarily around the vibrancy and diversity of the area.

20 With that was agreement that the functional issues around traffic and parking are significant. A number of submissions support the proposed one-way traffic trial for Centennial Circuit, but many submissions suggest that urgent actions are required to address car parking.

25 A summary of submission comments is provided below:

<b>Submission</b>	<b>Commentary</b>
<p>Precinct has potential to be home to internationally renowned companies exporting to the world.</p> <p>Support for major overhaul of roads, footpaths etc and rebranding of the estate. - should be rebranded urgently</p> <p>Council should work with “people who have the skills to create the right plan, then exit the two lots they own ASAP”</p> <p>The place needs to remain eclectic and get firmly onto the world stage – need to support existing diversity.</p>	<p>Comments are consistent with actions and intent of the Precinct Plan.</p> <p>The actions outlined in the Land Use section of the Precinct Plan will be important in addressing these comments.</p> <p>In relation to “exit the two lots...” planning for Lot 12 is continuing. There has not been a decision of Council regarding the future of the depot. This was communicated clearly in the EbD workshop and is noted in the draft Precinct Plan.</p> <p>Notwithstanding, a number of submissions recognise the central location and size of the depot land as having the potential to be strategically important for the future of the Estate.</p>
<p>Need to ensure that rents/ values don't increase to extent of pricing out small local business</p>	<p>Council has limited capacity to “control” rental values.</p> <p>However, this issue needs to be considered in looking at how to plan for future land use controls in the Estate.</p>
<p>Support for increased building height &amp; review of building design controls.</p> <p>Suggest that controls for properties fronting Bayshore Drive should promote ‘main street’</p>	<p>The potential for increased building height will be examined in the context of the scarcity of unconstrained urban land and the strategies outlined in the adopted Business</p>

<b>Submission</b>	<b>Commentary</b>
development with active frontages and awnings over footpath	and Employment Lands Strategy.
Footpath/ cycleway links to solar train platform should be a priority West Byron Shopping Centre (IGA, etc.) should be 'upzoned' to allow new development to 'come forward, to street, allowing awnings over path	Council's adopted Bike Plan includes construction of a shared path link to the existing path in the vicinity of Habitat, which will connect the Estate to the solar train platform. Upzoning of the West Byron Shopping Centre is currently not within the Precinct Plan. The Business and Employment Land Strategy identifies that, by 2031, there is likely to be sufficient demand for an additional large supermarket, and that West Byron may be an appropriate location to accommodate the demand. The future of the existing shopping area could be reviewed in the lead up to that.
Suggest that the potential for cross pedestrian paths should be encouraged through private lots – VPAs could be used, with FSR/ development incentives	This could be looked at in the longer term land use review. It is important to note that while some notional cross-property links are indicated in the draft Plan, no land owner would be forced to provide such a path. Cross connections are aspirational, and Council would work with individual owners, if the opportunity arises, to achieve mutually beneficial outcomes.
Need space for medium – large scale business Byron needs a 'proper industrial estate' with wider roads and off-street parking	This issue is addressed in the adopted Business and Employment Lands Strategy, which notes that, to address ongoing demand, a minimum additional eight to twelve hectares of land should be planned for industrial purposes. In undertaking that planning, Council will need to further refine the industrial needs, in part to determine whether the Shire can accommodate larger scale industries. In relation to the Arts & Industry Estate, the evolution of land uses there has resulted in a strong diversity of uses and scales, and it would be practically impossible to seek to 'revert' to a traditional industrial estate catering to larger industries.
Bike and walking paths needed – a central parking garage, with secure bike parking would allow users to park centrally and cycle/ walk to individual sites	The Precinct Plan acknowledges the need for bike / walking paths and recommends actions to plan for them. While a central parking garage might ease current parking congestion, there are no available sites to accommodate that

<b>Submission</b>	<b>Commentary</b>
	development in the short-term.
Strong support for walkways and cycleways and use of drainage corridors for such – but still need to address parking urgently – centrally located depot site ideal location for parking area, particularly for business owners/ tenant Timed on-street parking could then be used for customers	Walkways and cycleways are proposed as part of the adopted Bike and PAMP plans. Work is progressing in relation to the central drainage corridor, associated with the proposal to provide flows of treated wastewater into that drain from the STP, and that project includes the construction of a shared path along the drain. See comments above regarding depot site.
Strong support for traffic and parking solutions – but need real actions/solutions Suggest use of existing verges for increase parking solutions Suggest that shared on-street loading bays be used to free-up space within individual properties	Use of existing verges for parking would negate the possibility of providing shared paths in that space, and is therefore not supported. The concept of shared loading bays can be explored in future work.
Need to address potential conflicts for people who live in the estate, particularly noise (night)	The draft Precinct Plan notes that residential use will remain a part of the estate, but at a small-scale, and preferably linked to other commercial uses. In further planning for compatible land uses, it will be important to ensure that residential uses do not dominate in the future, as that would create the potential for raising land values and ‘pricing out’ alternate legitimate business use.
Support for future community use of depot site (with wider parking) – Master Plan should be developed as a priority	See comments above. Council will need to consider the future options for the depot site prior to any master planning.
Should be stronger transport link to solar train station	See comments above – shared path connections proposed.
Estate should be planned as an “Age Friendly” place	This can be considered in moving forward with the land use components of the Precinct Plan.
Concerned with extra traffic through Sunrise estate Suggest extra lighting and safer footpaths in Sunrise estate	This can be considered in moving forward with the land use components of the Precinct Plan.
Suggest dredging silt build up in Belongil estuary near Ewingsdale Road bridge	Not directly relevant to this Plan.

**Lot 12:**

Submissions in relation to future uses of Lot 12 were more varied, as summarised below:

<b>Submission</b>	<b>Commentary</b>
Support for education as an anchor, but not in location or of the scale proposed by TAFE. Support medium density residential – either as shop-top housing or co-housing units Height should be 11.5m (three storey) with potential for a central landmark building higher Should include a central civic open space precinct incorporating public art Should have pedestrian and vehicle links to Habitat Suggest that some lots be created for sale on “open market” Boardwalks/ observation platforms suggested to take advantage of high environmental value lands to west	Suggestions from a local architect/urban designer were supported by a Master Plan. Land uses and key site principles were discussed at a Strategic Planning Workshop on 5 June 2020 and work on refining the desired outcomes is continuing.
Beautiful and inspiring place to learn, research, to provide local businesses and NGO’s with support in terms of research and action projects Management by independent not for profit trust TAFE should not dominate space	Suggestions from a local community member were also supported by a Master Plan – as above, work continues on defining desired outcomes.
Liked anchor option Art studios a great idea Affordable permanent co-housing supported Support 3 storey maximum Car park at rear and green spaces maximised	As above.
Height should be restricted to 2 storey Suggested more public uses – swimming pool, skate park, Arakwal cultural centre, child care	Building height is yet to be refined/ finalised. It is unlikely, however, that the public uses nominated will form part of the future of the site, although a cultural centre and child care could be considered.
Retail not supported Ideal site for real social affordable housing Should not be ‘given’ to private developers	Comments noted. Council is yet to determine delivery options for the future of the site.
Access thru site to Cavanbah supported	It is suggested that bike/ pedestrian access to Cavanbah should be achieved in planning for the future of the site.
TAFE use supported	Noted – previous Council resolution also supported TAFE use.
Existing traffic/parking problems need to be solved (for whole estate) before further development of this land	It is considered that future planning of Lot 12 can progress while wider actions are implemented.

Agency Submissions:

<b>Submission</b>	<b>Commentary</b>
<b><i>Planning, Industry &amp; Environment - Biodiversity and Conservation Division</i></b>	
Direct consultation with the Bundjalung of Byron Bay Arakwal People should be undertaken and documented in the Precinct Plan	Preliminary discussions were held with Arakwal representatives and further engagement will take place as part of implementation of various actions that come from the Plan.
The proposal to investigate public car parking on Council land north of Wallum Place should ensure that areas of high environmental value vegetation are not disturbed	This will be considered in detail should that suggested car parking be pursued.
The design of drainage works associated with the multi purpose drainage areas should enhance the drainage network function	Noted.
The Plan should emphasis the sensitive nature environment within and surrounding the precinct by including SEPP Coastal management wetlands and proximity areas on mapping	There are no mapped Coastal Wetlands or proximity areas within the Study area.
Future development should avoid and mitigate impacts on areas of high environmental value	Noted.
The precinct plan should refer to the NSW Government's Net Zero Emissions Guidance for NSW Councils	Implementation of various recommended actions will be undertaken in conjunction with the actions and principles of Council's Net Zero Emissions Strategy.
The Plan should include actions to minimise heat and increase urban green cover in the precinct	Noted – will be considered in looking at the land use actions.
<b><i>Transport for NSW</i></b>	
TfNSW supports the Draft Precinct Plan, particularly the focus on alternative forms of travel and transport	Noted.
There needs to be strong recognition of any impact on Ewingsdale Road, especially if development is planned prior to upgrades of that road network. The timing of any land use, traffic or density changes could cause further traffic congestion and conflict if not acknowledged and properly managed	Noted – will be considered in looking at the land use actions.
While the Draft Plan is a high-level design document, specific to the BA&IE, it should consider any design and access arrangements in association with the proposed residential development to the south of Ewingsdale Road which will utilise the Bayshore Drive and Banksia Drive intersections	Noted – will be considered in looking at the land use actions.
The need to efficiently manage the movement of larger vehicles onto and through the Estate is recognised on page 18 of the document. This is supported, but the words 'safety and efficiency'	Noted.

<b>Submission</b>	<b>Commentary</b>
should be included to ensure the correct focus from a road user and network safety view point	
<b>Planning, Industry &amp; Environment</b>	
The Byron Arts and Industry Estate is recognised as a key employment hub in the North Coast Regional Plan 2036 and in the Northern Rivers Regional Economic Development Strategy. I am therefore pleased to offer the Department's support for the Precinct Plan and for Council's ongoing efforts to coordinate planning for the Estate.	Noted.
It is important that the proposed increase in retail activity in the Estate does not significantly detract from the function of the Byron Bay town centre.	Noted – will be considered in looking at the land use actions.
The key land use action in the draft Precinct Plan is Action LU2, which proposes that two major Council-owned sites within the Precinct will potentially permit retail that is not ancillary to uses on the sites. It will be important to establish that retail development is appropriate on these sites in the context of the Regional Plan and the Byron Shire Business and Industrial Lands Strategy	Noted – see comments above.

Based on all of the submissions, it is considered that there is no need to amend or adjust the draft Precinct Plan as exhibited. Most of the submissions contained ideas and commentary that will be relevant in moving forward with the recommended action.

### **Next Steps**

Should Council adopt the Precinct Plan, staff will prepare a program for the implementation of actions. The program will include a prioritisation of actions and consequential budget impacts.

For Lot 12, staff will continue to work with Councillors to refine a vision for the site, identify key future land uses and design principles, and identify the preferred model for delivery of the agreed outcomes.

## **STRATEGIC CONSIDERATIONS**

### **Community Strategic Plan and Operational Plan**

<b>CSP Objective</b>	<b>L2</b>	<b>CSP Strategy</b>	<b>L3</b>	<b>DP Action</b>	<b>L4</b>	<b>OP Activity</b>
<b>Community Objective 4: We manage growth and change responsibly</b>	4.1	Support the visions and aspirations of local communities through place-based planning and management	4.1.1	Develop, implement and update Place Plans that promote place-based forward planning strategies and actions	4.1.1.6	Develop the Arts and Industry Estate Precinct Plan



***Legal/Statutory/Policy Considerations***

Nil.

**5    *Financial Considerations***

Funds have been allocated to implement the one-way traffic trial for Centennial Circuit.

- 10    Council will need to consider the allocation of funds in order to implement actions within the Precinct Plan. These should be looked at as a part of regular budget review process.

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.7

**Report No. 13.7** **PLANNING - DA 10.2020.61.1 Multi-Dwelling Housing Comprising Ten (10) Dwellings at 7 Julian Rocks Drive Byron Bay**  
**Directorate:** Sustainable Environment and Economy  
**Report Author:** Luke Munro, Planner  
**File No:** I2020/756

### Proposal:

<b>DA No:</b>	10.2020.61.1		
<b>Proposal description:</b>	Multi-Dwelling Housing Comprising Ten (10) Dwellings		
<b>Property description:</b>	LOT: 6 DP: 714410, LOT: 7 DP: 714410		
	7 Julian Rocks Drive BYRON BAY, 9 Julian Rocks Drive BYRON BAY		
<b>Parcel No/s:</b>	35540, 35550		
<b>Applicant:</b>	Julian Rocks Developments Pty Ltd		
<b>Owner:</b>	Julian Rocks Developments Pty Ltd		
<b>Zoning:</b>	R2 Low Density Residential		
<b>Date received:</b>	6 February 2020		
<b>Integrated / Designated Development:</b>	<input type="checkbox"/> Integrated	<input type="checkbox"/> Designated	<input checked="" type="checkbox"/> Not applicable
<b>Concurrence required</b>	No		
<b>Public notification or exhibition:</b>	<ul style="list-style-type: none"> <li>Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications</li> <li>Exhibition period: 20/02/20 to 11/3/20</li> <li>13 submissions received</li> </ul>		
<b>Planning Review Committee:</b>	14.05.2020		
<b>Delegation to determine</b>	Council		
<b>Issues:</b>	Minor building height plane intrusion Bike path construction (5.2 – Section 7.11 Contributions)		

### Summary:

The Development Application (DA) proposes Multi-Dwelling Housing Comprising Ten (10) Dwellings. The site has frontage to both Julian Rocks Drive and Bayshore Lane and the development has been designed to address both street frontages and will consist of:

- 4 x 3 bedroom dwellings;
- 4 x 2 bedroom dwellings; and
- 2 x 1 bedroom units.
- 

The development will include the demolition of the 2 existing dwelling houses on the site.

The proposed development is considered to be largely consistent with the provisions of the Byron LEP 2014 and DCP 2014 and is not likely to result in significant impacts on the existing residential environment. The site comprising a total area of 1561 m<sup>2</sup> has dual frontage with rear lane access

and sits opposite a number of residential dwellings on lots with an area of approximately 400m<sup>2</sup> each.

5 The development provides for a mix of housing types and bedroom sizes and has been appropriately designed in terms of Council's planning controls for heights, setbacks building height plane, car parking and open space. The property is sited in proximity to a neighbourhood shopping centre, the industrial estate and "Habitat" for work and shopping access, is unconstrained and is serviced with necessary infrastructure.

10 It is considered the proposal will not prejudice or compromise the public interest or create an undesirable precedent and the application is recommended for approval subject to conditions of consent.

NOTE TO COUNCILLORS:




15 In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have  
20 been called by the mover and seconder of all motions relating to this report.

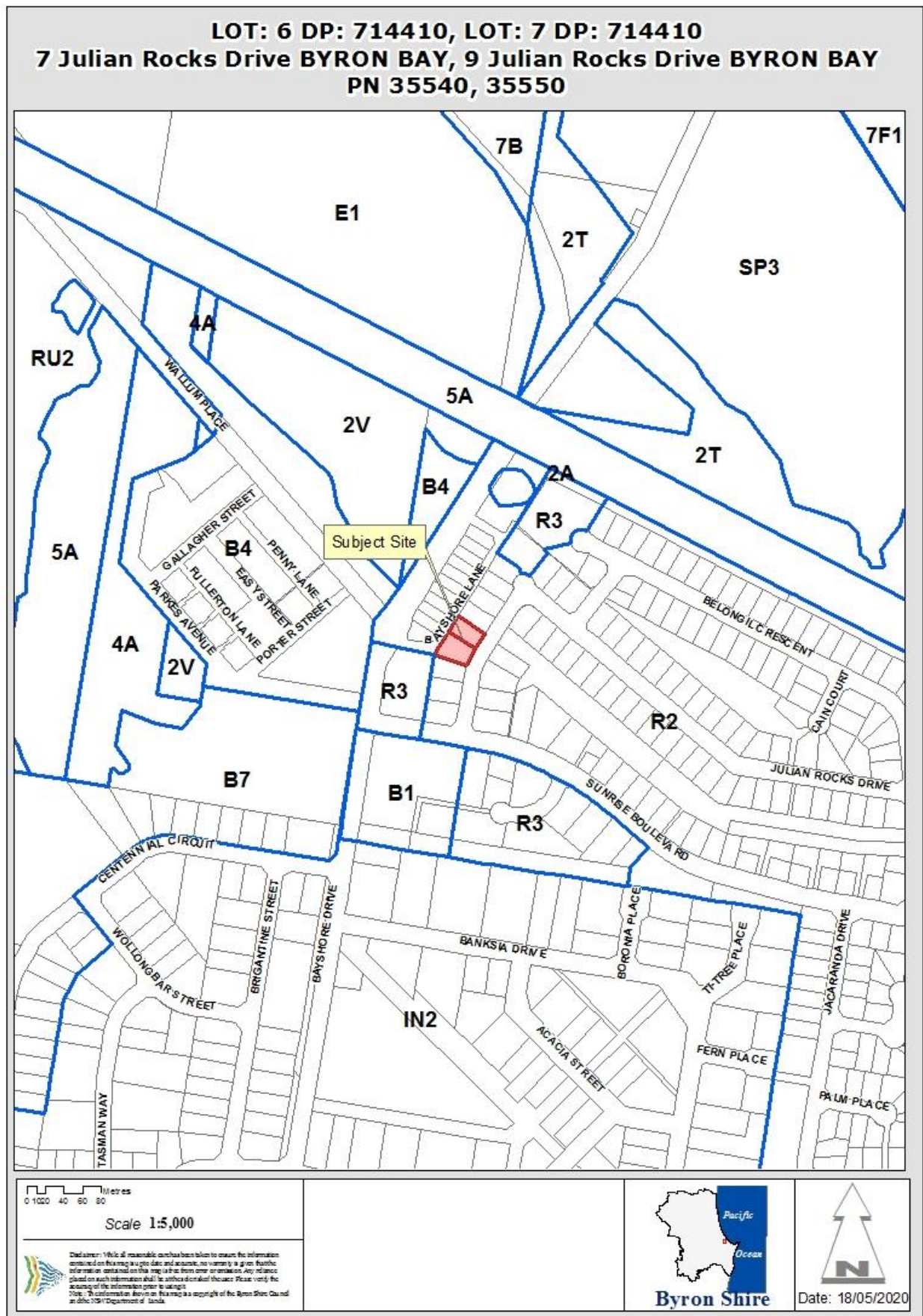
---

**RECOMMENDATION:**

**That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application 10.2020.61.1 for Multi-Dwelling Housing Comprising Ten (10) Dwellings, be granted consent subject to the conditions listed in Attachment 3 (E2020/40426).**

**Attachments:**

- 25
- 1 Plans 10.2020.61.1, E2020/37165 
  - 2 Perspectives and Shadow Diagrams 10.2020.61.1, E2020/40425 
  - 3 Conditions of consent 10.2020.61.1, E2020/40426 
  - 4 Confidential - Submissions received 10.2020.61.1, E2020/37162
- 30



**REPORT**

**Assessment:**

**1. INTRODUCTION**

**1.1. History/Background**

The site is subject to the previous applications:

- 7 Julian Rocks Drive – Sewerage Drainage connection 1987
- 9 Julian Rocks Drive – 6.1987.2158.1 New Dwelling Approved 07.04.1987

**1.2. Description of the proposed development**

This development application seeks approval for a Multi-Dwelling Housing Comprising Ten (10) Dwellings.

The subject allotment is legally identified as Lot 6 DP 714410 and Lot 7 DP 714410 and is known as 7 Julian Rocks Drive and 9 Julian Rocks Drive, Byron Bay. Both lots have a dual frontage with primary frontage to Julian Rocks Drive and secondary (rear) frontage to Bayshore Lane. Both lots contain a single detached dwelling (to be demolished).

The proposed development will consist of a total of ten (10) Multi dwelling housing units separated into two blocks with a central driveway for access to Units 1 – 8 and Bayshore Lane utilised for visitor parking and access to Units 9 & 10. The development will address both street frontages as shown below.



Julian Rocks Drive streetscape





Bayshore Lane streetscape

- 5 The proposal consists of:
- 4 x 3 bedroom dwellings
  - 4 x 2 bedroom dwellings (including one of these as an adaptable dwelling – Unit 7); and
  - 2 x 1 bedroom units.

- 10 Each unit will be provided with private open space at ground level and Units 3 and 5 will also incorporate a first floor deck directly accessible from the first floor kitchen and lounge room.

The side setbacks will be densely landscaped with screening plants to ensure visual privacy between the proposed development and the adjoining properties.

- 15 Each dwelling will contain the following:

Type A units	
Ground Floor	Open plan kitchen, dining & lounge Double car garage Laundry Roofed patio Private fenced yard
First Floor	Master bedroom with built in robe and ensuite 2 additional bedrooms with built in robe Bathroom Linen/Storage cupboard Study nook
Type B units	
Ground Floor	Open plan kitchen, dining & lounge Single car garage External open laundry Roofed patio Private fenced yard
First Floor	Master bedroom with built in robe and ensuite Second bedroom with built in robe Bathroom
Type C units	
Ground Floor	Master bedroom with built in robe and ensuite Powder room under stairs



	External open laundry Roofed patio Private fenced yard
First Floor	Open plan kitchen, dining & lounge Deck
Type D unit - Adaptable Unit	
Ground Floor	Open plan kitchen, dining & lounge External open laundry Roofed patio Private fenced yard
First Floor	Master bedroom with built in robe Second bedroom with built in robe Bathroom

In response to Council's information request, the applicant has incorporated a number of changes into the design of the dwellings including:

- 5
  - Reduced the number of bedrooms onsite by 2 bedrooms from 24 bedrooms to 22 bedrooms overall.
  - Reversing the roof pitch of the southern unit building to reduce the BHP intrusion.
  - Reducing the FSR ratio to under 0.5:1 to comply with the LEP provisions
  - Increasing private open space areas from 561m<sup>2</sup> to 602m<sup>2</sup>
  - Provided accessible unit with adequate dimensioned car parking area.
- 10
  - Improved internal privacy between units through use of opaque and textured glass.
  - Provided large landscaping indents in the front fence to Julian Rocks Drive.

15 Shadow diagrams have been submitted showing the extent of existing overshadowing and the impact of the proposed development in relation to overshadowing. The proposed development generally complies with the building height plane except for a small area of encroachment on the southern corner which is addressed in Section 4.4A of this report.

### **1.3. Description of the site**

20 A site inspection was carried out on 19 February 2020

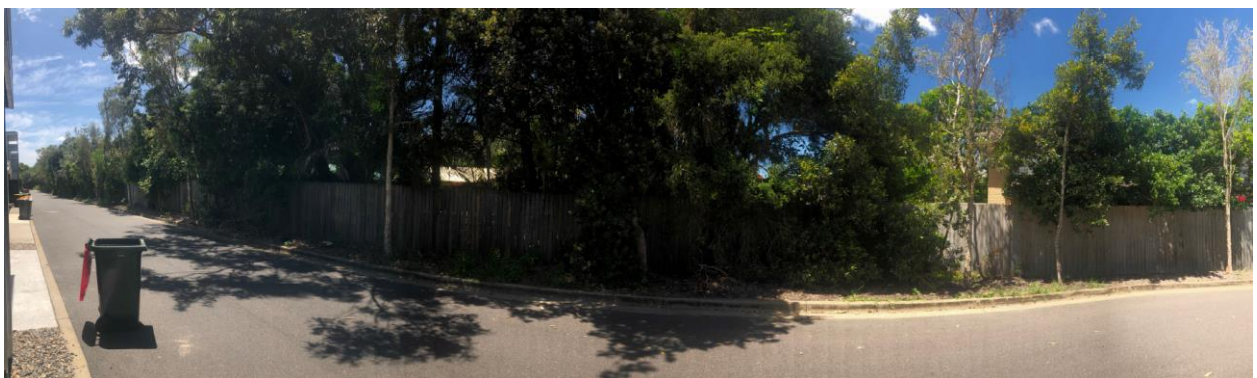
Land is legally described	LOT: 6 DP: 714410, LOT: 7 DP: 714410	
Property address	7 Julian Rocks Drive BYRON BAY, 9 Julian Rocks Drive BYRON BAY	
Land is zoned:	R2 Low Density Residential	
Land area is:	1561.3 m <sup>2</sup>	
Property is constrained by:	Acid Sulfate Soils Class 3	
	Is a BDAR required due to the location of the proposed development?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Are there any easements in favour of Council affecting the site?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Vegetation Management Plan which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Voluntary Planning Agreement which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No



**Photo 1:** 7 Julian Rocks Drive



5 **Photo 2:** 9 Julian Rocks Drive



**Photo 3:** Bayshore Lane – looking east towards 7 and 9 Julian Rocks Drive





**Photo 4:** Bayshore Lane – looking west (opposite 7 and 9 Julian Rocks Drive)

**5 2. SUMMARY OF REFERRALS**

Referral	Issue
Environmental Health Officer*	No objections subject to conditions.
Development Engineer	No objections subject to conditions.
S64 / Systems Planning Officer	No objections subject to conditions.
S94 / Contributions Officer	No objections subject to conditions.

**3. SECTION 4.14 – BUSH FIRE PRONE LAND**

- 10 Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document '*Planning for Bush Fire Protection 2006*'. The site is not bush fire prone land.

**EFFECT OF 10/50 RULE ON SIGNIFICANT VEGETATION**

- 15 The site is not identified as being bushfire prone.

**4. SECTION 4.15C – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES**

- 20 Having regard to the matters for consideration detailed in Section 4.15(1) of the Environmental Planning & Assessment Act 1979 (EP&A Act), the following is a summary of the evaluation of the issues.

**4.1 State Environmental Planning Instruments**

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: Councils Environmental Health Officer has assessed the site in relation to SEPP55 and provided the following comments: <i>"The site contains two existing approved dwellings BA 87/2305 (PR35540) and BA 87/2158 (PR35550), both of which pre-date SEPP55. The land appears to have been used for residential purposes since."</i>		

	Satisfactory	Unsatisfactory
<p><i>Desktop analysis of Council's archive, Geocortex mapping database and historical aerial imagery revealed no evidence of past contaminating activities. A site inspection conducted on 30 March 2020 did not reveal any evidence of visual contamination; no significant observable point sources such as drums, wastes, rubbish or unusual odours, or yellowing of vegetation were observed.</i></p> <p><i>The land use type remains unchanged and the proposed development does not result in an increased sensitivity, and <b>therefore, the site is considered suitable for the intended development. No further investigation or action warranted</b></i></p>		
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration: A valid BASIX Certificate has been provided.</p>		
<a href="#">State Environmental Planning Policy (Coastal Management) 2018</a>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration: The site is not mapped within the Coastal Management Area or the Coastal Environment Area. As the site is not located within either of these areas no substantive issues are raised in regard to this.</p>		

#### 4.2A Byron Local Environmental Plan 2014 (LEP 2014)

In accordance with LEP 2014 clauses 1.4 and 2.1 – 2.3:

- 5 (a) The proposed development is defined in the LEP 2014 Dictionary as Multi dwelling housing;  
 (b) The land is within the R2 Low Density Residential according to the Land Zoning Map;  
 (c) The proposed development is Permitted with Consent; and  
 (d) Regard is had for the Zone Objectives as follows:

Zone Objective	Consideration
To provide for the housing needs of the community within a low density residential environment.	The proposed 10 units will provide additional dwellings and increase housing diversity within the area.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	Not Applicable – no non residential uses are proposed.

#### Clause 4.1E Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings

The Byron LEP 2014 identifies that the minimum lot size for multi dwelling housing development is 1,000m<sup>2</sup>. The subject site commands an area of 1,561m<sup>2</sup> and therefore complies with the minimum lot size requirements for multi dwelling housing under the LEP 2014.

#### Clause 4.3 Height of buildings

The Height of Buildings map identifies the site has a maximum allowable height of up to 9m. The proposed new multi dwelling housing units will have an approximate height of 6.5m above ground level which is below the 9.0m height limit.

#### Clause 4.4 Floor space ratio

The site has an allowable Floor Space Ratio (FSR) of 0.50:1, the current proposal has a total FSR under 0.5:1 and complies with the allowable FSR for the site.

**Clause 6.6 Essential Services**

The subject site has full access to essential services or the ability to make such services available as required.

**5 4.3 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority**

No Draft Environmental Planning Instruments apply to the development.

**10 4.4A Byron Shire Development Control Plan 2014 (DCP 2014)**

Byron DCP 2014 applies to the development. The following comments are provided

<b>What Section and prescriptive measure does the development not comply with?</b>	<b>Does the proposed development comply with the Objectives of this Section? Address.</b>	<b>Does the proposed development comply with the Performance Criteria of this Section? Address.</b>
<b>Chapter B2 – Preservation of Trees and Other Vegetation</b>	Yes There is no vegetation of significance on the sites. The proposal will incorporate extensive landscaping throughout the site.	Yes The site contains existing residential landscaping which is to be removed as part of the development.
<b>B4.2.5 Car Parking Requirements and table</b>  <b>B4.2.12 Parking Schedules</b>	Yes Total required 17 spaces onsite with 17 spaces provided onsite.  Adequate parking is provided onsite in accordance with Councils DCP 2014.	Yes Chapter B4 of DCP 2014 requires the following car parking spaces: 4 x 3 bedroom units = 8 parking spaces 4 x 2 bedroom units = 4 parking spaces 2 x 1 bedroom units = 2 parking spaces  Total resident parking required = 14 spaces  Total visitor parking required = 3 visitor parking spaces  <b>Total required 17 spaces onsite with 17 spaces provided onsite.</b>  Adequate parking is provided onsite in accordance with DCP 2014.
<b>Chapter B9 – Landscaping</b>	Yes The development provides a high quality landscaping treatment that will enhance the amenity and function of the development and provide a pleasant environment for residents that supports their needs and encourages outdoor lifestyles.	Yes The development provides a total of 572m <sup>2</sup> of open space areas with landscaping provided along the site frontages and along both side boundaries. (Plus a further 30m <sup>2</sup> of decks). Deep soil areas onsite equate to 472m <sup>2</sup> (over 30% of the total site) not including grass pave areas and impervious areas. Over 75% of the landscaped areas onsite are pervious and are deep soil zones as defined by the DCP 2014.

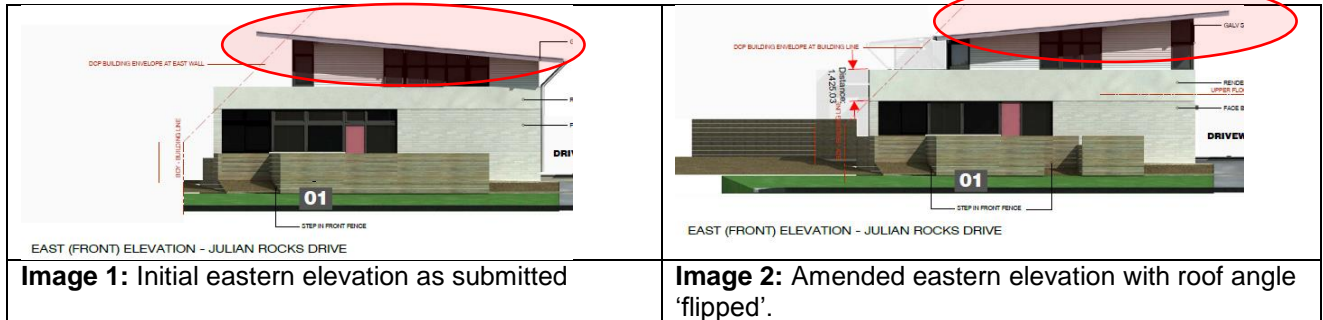
<p><b>D1.2.1 Building Height Plane (BHP)</b></p>	<p>Yes</p> <p>The intrusions into the BHP are considered minor and will have no material impact on adjoining dwellings in terms of access to sunlight, privacy, overbearing bulk and scale and are considered acceptable in this instance.</p>	<p>Yes</p> <p>The development includes a small intrusion to the terrace roof for Unit 1 of 1.4m into the BHP for a length of 5.5m.</p> <p>The remainder of the development is below the BHP with the exception of the western elevation of the development to Bayshore Lane which will not result in any overshadowing to adjoining properties other than the laneway</p> <p><i>Please also refer to additional discussion regarding the BHP at the end of this Section.</i></p>
<p><b>D1.2.2 Setbacks from Boundaries</b></p>	<p>Yes</p> <p>The location of the visitor parking is acceptable in this instance as the location is consistent with the existing development on the western side of Bayshore Lane and will result in more onsite landscaping areas.</p> <p>Further the visitor parking will be constructed from permeable pavement to reduce any large expanse of concrete when viewed from Bayshore Lane</p>	<p>Yes</p> <p>The frontage setbacks for the proposed multi dwelling housing comply with the 4.5m minimum front setback.</p> <p>The rear setbacks comply with the minimum 3m setback to laneways.</p> <p>The visitor parking spaces are located within the 3m setback to the Bayshore Lane and will be constructed with permeable pavement.</p> <p>The reduced setback for visitor parking to Bayshore Lane is considered acceptable in this instance given the western side of Bayshore Lane has similar reduced setbacks to parking areas and utilises permeable pavements for a number of parking areas.</p>
<p><b>D1.2.5 Fences</b></p>	<p>Yes</p> <p>Although a 1.8m front fence is proposed to the Julian Rock Drive frontage of the site the fence incorporates large landscaped recesses which exceeds the minimum 0.9m x 0.9m</p>	<p>Yes</p> <p>The front fence to Julian Rocks Drive incorporates large 1.5m recesses to allow landscape plantings to reduce the dominance of the front fence in accordance with the D1.2.5 Fences, this exceeds the 0.9m x 0.9m recesses required by</p>



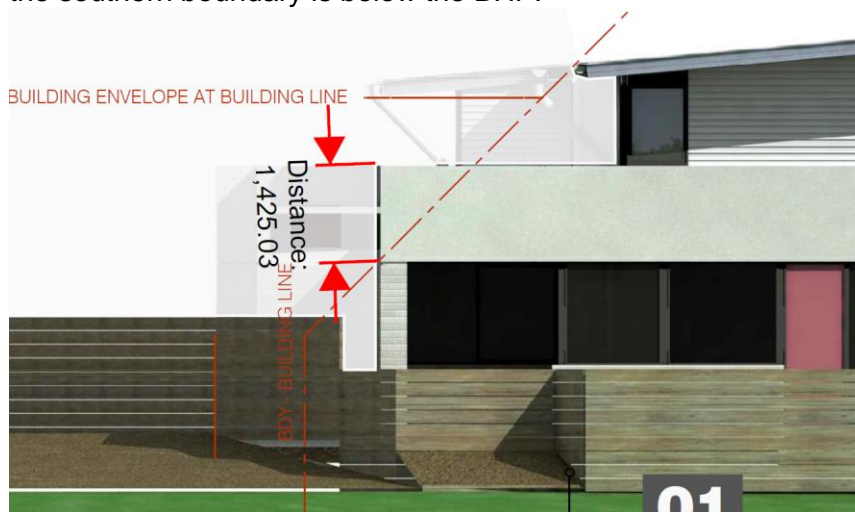
	<p>recesses required under Prescriptive Measures 1(c).</p> <p>In this instance the front fence will not detrimentally impact on the existing streetscape.</p>	Prescriptive Measures 1(c).
<p><b>D1.5.2 Character</b></p> <p><b>And</b></p> <p><b>D1.5.3 Adjoining and Adjacent Development</b></p>	<p>Yes</p> <p>The development of a multi dwelling housing development on a 1561m<sup>2</sup> block is consistent with the R2 Low Density Residential Zone.</p>	<p>Yes</p> <p>The proposed multi dwelling housing buildings have been designed with two individual units fronting onto Julian Rocks Drive to minimise the number of units overlooking the streetscape and to look as far as possible like two dwellings.</p> <p>The development is in accordance with the minimum lot size for a multi dwelling housing development and maintains a FSR of less than 0.5:1.</p>
<b>D1.5.4 Private Open Space</b>	<p>Yes</p> <p>Each dwelling will have adequate provision of private open space (POS) as shown on the proposal plans.</p> <p>The proposed POS areas are suitable for the anticipated recreational needs of residents and provide direct access from living areas in accordance with D1.6.1 Private Open Space Courtyards in DCP 2014</p>	<p>No</p> <p>Unit 6 provides 28m<sup>2</sup> of POS incorporating outdoor area and deck areas which are directly accessible from the ground floor living area.</p> <p>All other dwellings will provide between 30m<sup>2</sup> – 80m<sup>2</sup> of POS areas (30m<sup>2</sup> is prescribed as the minimum).</p> <p>The POS area to Unit 6 has dimensions suitable for outdoor recreations needs for a 2 bedroom dwelling and provides northern orientation to ensure year round comfort in terms of access to sunlight.</p> <p>The proposed POS areas are suitable for the anticipated recreational needs of residents and provide direct access from living areas in accordance with D1.6.1 Private Open Space Courtyards of the Byron DCP 2014</p>

### D1.2.1 Building Height Plane (BHP)

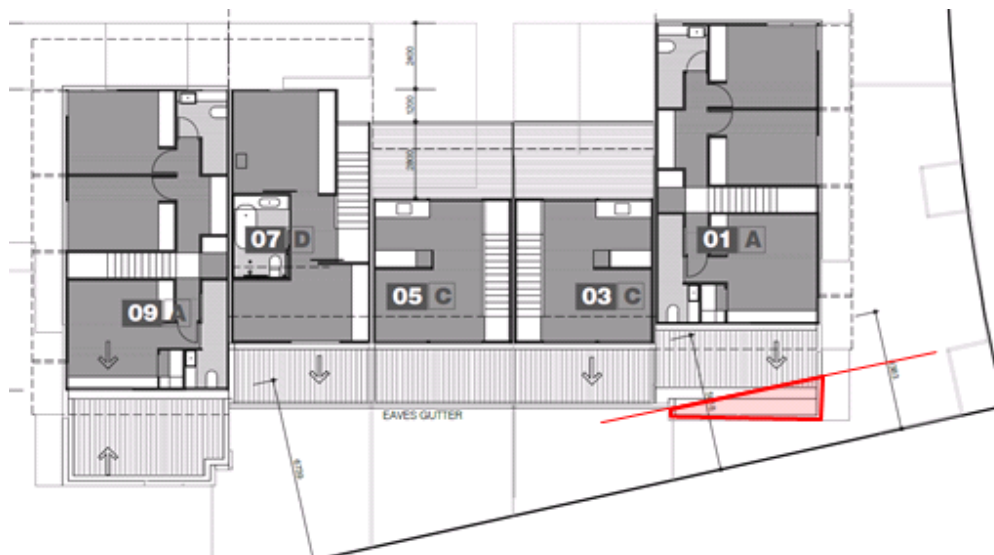
As a result of the information request the applicant has redesigned/flipped the roof line of the southern units with the skillion roof now angling down to the southern boundary and reduced the eave overhang, thereby reducing the BHP intrusion.



The changes to the development have resulted in removing the eaves from intruding into the BHP. The current development intrudes by **1.4m** into the BHP (Image 3) along the south eastern corner of the development for a length of 5.5m (Image 4). The remainder of the development adjacent to the southern boundary is below the BHP.



**Image 3:** Intrusion into BHP to the south eastern corner of Unit 1



**Image 4:** 5.5m length of BHP intrusion to the southern elevation of Unit 1.

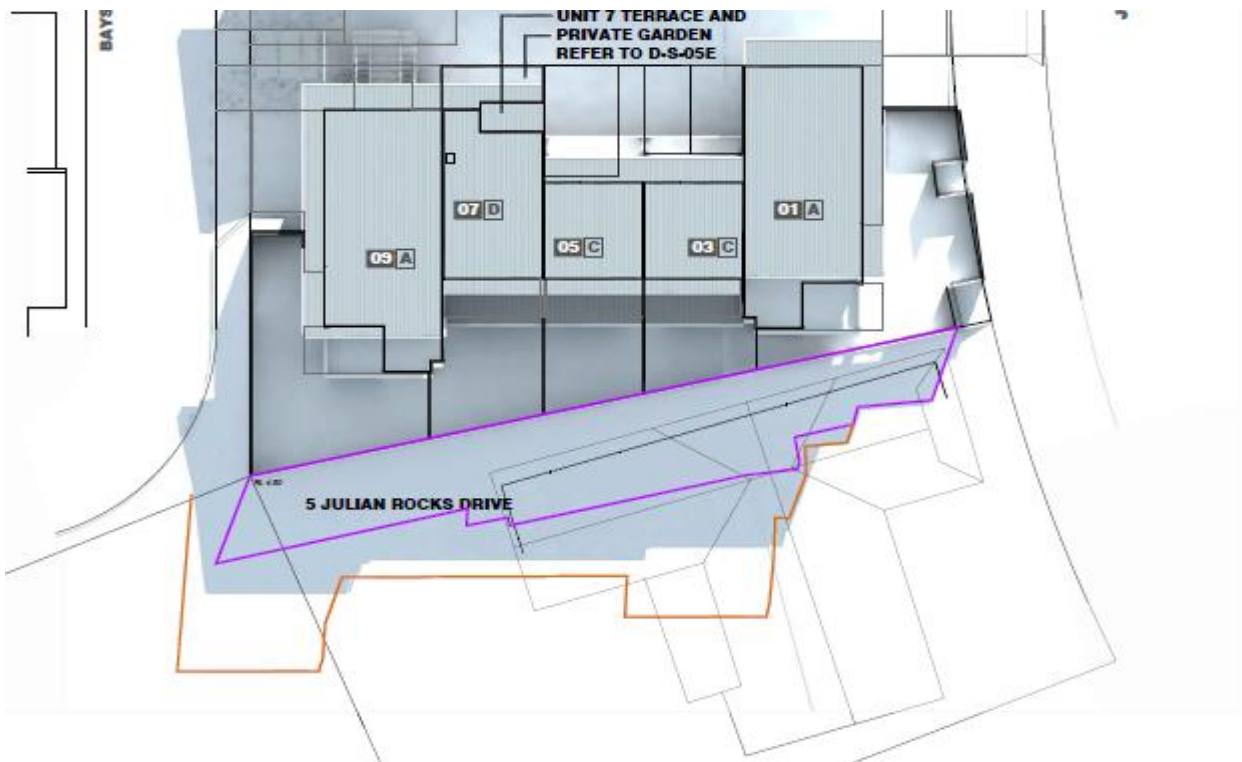


**Image 5:** Extent of BHP intrusion to western boundary adjacent to Bayshore Lane.

- 5 BHP intrusion into western laneway frontage will not impact on any residential neighbours and is a result of a large eave to protect from western sun.

Shadow diagrams provided show the development will slightly increase shadowing to 5 Julian Rocks Drive. The plans have been prepared showing the existing shadow cast by the current dwelling and boundary fencing and shadow cast by the proposed development. In this regards the increase in overshadowing in midwinter is not unacceptable considering the development predominantly complies with the Building height plane on this elevation.

10



- 15 **Image 6: 9am Midwinter Shadow Plans (purple line - existing shadow, yellow line – previous proposal)**

The proposed development satisfies the relevant Objectives of DCP 2014.

**4.4B Byron Shire Development Control Plan 2010 (DCP 2010)**

**5 4.5 Any Planning Agreement or Draft Planning Agreement?**

	<b>Yes</b>	<b>No</b>
Is there any applicable planning agreement or draft planning agreement?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Consideration:		

**4.6 Environmental Planning & Assessment Regulation 2000 Considerations**

<b>Clause</b>	<i>This control is applicable to the proposal:</i>	<i>I have considered this control as it relates to the proposal:</i>	<i>If this control is applicable, does the proposal comply?</i>
<b>92</b>	Yes	Yes	Yes – demolition of existing dwellings to be conditioned to accord with the provisions of AS 2601
<b>93</b>	No	N/A	N/A
<b>94</b>	No	N/A	N/A
<b>94A</b>	No	N/A	N/A

10 \* Non-compliances and any other significant issues discussed below

**4.7 Any Coastal Zone Management Plan?**

	<b>Satisfactory</b>	<b>Unsatisfactory</b>	<b>Not applicable</b>
Is there any applicable coastal zone management plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**15 4.8 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

<b>Impact on:</b>	<b>Likely significant impact/s?</b>
<b>Natural environment</b>	No. The proposal will not have a significantly adverse impact on the natural environment of the locality.
<b>Built environment</b>	No. The proposal will not have a significantly adverse impact on the built environment of the locality. Short term impacts will arise during construction and conditions of consent have been recommended in relation construction and demolition of the development to control hours of work, construction noise, builders waste and the like.
<b>Social Environment</b>	The development will provide a mixture of housing types for residents in the shire, conditions of consent proposed to prohibit holiday letting.
<b>Economic impact</b>	The proposal will generate positive economic impacts through the construction industry and associated multiplier effects through the local economy.

**4.9 The suitability of the site for the development**

The site is a serviced, unconstrained property and having regards to its location to the neighbourhood shopping centre is considered suitable for the proposed development.

**4.10 Submissions made in accordance with this Act or the regulations**

The development application was publicly exhibited  
There were **13** submissions made on the development application:

Submission	Comment
<b>Short term holiday rental</b> These dwellings will no doubt be turned into Airbnb just like most of the houses already are.	Condition/s are recommended to restrict the use of the individual units for short term holiday rentals where legally able.
<b>Character and density</b> This submission for 7-9 Julian Rocks Drive mentions medium density housing and as far as I am aware the area is low destiny. Medium density is out of character with this street as the majority of dwellings are single dwellings or duplexes.	LEP 2014 identifies that the minimum lot size for Multi Dwelling Housing development is 1,000m2. The subject site has an area of 1,561m2 and therefore complies with the minimum lot size requirements for a dual occupancy (detached) under the LEP 2014.
<b>Non-compliance with Floor Space Ratio</b> The proposed development exceeds the Floor Space ratio provisions by 1.5m2 over the required 0.5:1 FSR.	The original plans supplied proposed an FSR of greater than 0.5:1 which has now been reduced in size to comply with the maximum allowable FSR.
<b>Car Parking</b> For 10 dwellings there are only provision for 14 garages (even though there are 25 bedrooms within in the complex). There are only 3 visitor spaces which are only accessible from the rear of the property at Bayshore lane. This DA provides 10 units comprising a total of 23 bedrooms 13 car parking spaces 3 Visitor car spaces. However this development could potentially house up to 46 residents living in this complex. Example:- 23 Bedrooms x 2 per people per bedroom = 46 residents.	Please refer to Section 4.4A of this report which demonstrates that the proposed development complies with the requirements of Chapter B4 DCP 2014. The development requires 14 parking spaces for residents with 3 parking spaces for visitors.  The development provides 14 parking spaces for residents and 3 parking spaces for visitors and therefore complies with DCP 2014.
<b>Kollegative project</b> It seems to me that the developer has attempted to hide the fact that this is another Kollegative project by using their Trust "Julian Rocks Developments" to apply for this DA. It would appear they are trying to circumvent the opposition that occurred when they attempted to over develop the block on the opposite side of the road.	Each development application is assessed on its individual merits and the applicable planning legislation.
<b>Landscaping</b> The landscape concept plan DS04 indicates 'deep soil plantings' for medium trees and feature trees, shrubs and small trees – circle	Under DCP 2014 <b>Deep soil area</b> means:  <i>a specified area of the development site, not covered by an impervious surface, that</i>

<p>numbers 6 and 8. There is also a single palm and pandanus – circles 5 and 7. Given the considerable surface area on Plan DSO4 shown ‘turf, grasses and groundcovers’, the claim that the deep soil zone makes up 82% of the total open space needs checking.</p>	<p><i>allows water on the site to infiltrate naturally to the groundwater and allows for the future provision of mature vegetation.</i></p> <p>There is no requirement that trees or large shrubs are able to be planted in these areas. The only requirement is that the Deep Soil areas are not impervious. Areas of grass and turf can be included in Deep Soil area calculations.</p>
<p><b>Overshadowing and Privacy</b> The non-compliance with the Building Height Plane under Chapter D1 of Byron DCP 2014 demonstrates unacceptable overshadowing for the adjoining landowner at No.5 Julian Rocks Drive. It provides an indication that the proposed development will cause privacy and overshadowing impacts on adjoining lands and should not be supported in its current form.</p>	<p>The applicant has redesigned/flipped the roof line of the southern units with the skillion roof now angling down to the southern boundary and reduced the eave overhang, thereby reducing the BHP intrusion.</p> <p>The development intrudes by 1.4m into the BHP on the south eastern corner of Unit 1, with the remainder of the development (excluding eaves to the western boundary) are below the BHP. The majority of the southern elevation of the development will be below the BHP.</p> <p>Shadow diagrams provided show the development (although mostly below the BHP) will slightly increase shadowing to 5 Julian Rocks Drive. The development has been demonstrated to not result in unacceptable overshadowing or overbearing with a progressively larger setback along the southern boundary and majority compliant BHP.</p>
<p><b>Non-Compliance with Landscaped Area Requirements</b> The proposal does not comply with the minimum landscaped area requirements under Chapter B9 Landscaping B9.4.2 Multi Dwelling Housing, Attached Dwellings and Residential Flat Buildings. The proposal fails to meet the prescriptive measures set out of Common Landscaped Area requirement, providing only 70m<sup>2</sup> of Common Landscaped Area, with 491m<sup>2</sup> of Private Open Space. Further a minimum of 75% of the total common landscaped area must be deep soil areas.</p>	<p>The development provides a total of 572m<sup>2</sup> of open space areas with landscaping provided along the site frontages and along both side boundaries. (Plus a further 30m<sup>2</sup> of decks).</p> <p>The development will provide a high quality landscaping which will enhance the amenity and function of the development through the use of boundary landscaping, permeable pavements and landscaped areas to break up large expanses of concrete.</p> <p>Further the 3 visitor car parking spaces will incorporate permeable pavement to allow further infiltration of water and a softening of the development when viewed from Bayshore Lane. Permeable pavement has also been used for dwellings along Bayshore Lane.</p> <p>Please also refer to 4.4A for further assessment.</p>
<p>Unit 6 provides only 28m<sup>2</sup> of private open space area and this is below Council's DCP requirements for private open space.</p>	<p>Unit 6 provides 28m<sup>2</sup> of POS incorporating outdoor area and deck areas which are directly accessible from the ground floor living area. All other dwellings will provide between 30m<sup>2</sup> – 80m<sup>2</sup> of POS areas which significantly exceed</p>



	<p>30m2.</p> <p>The POS area to Unit 6 has dimensions suitable for outdoor recreations needs for a 2 bedroom dwelling and provides northern orientation to ensure year round comfort in terms of access to sunlight.</p> <p>The proposed POS areas are suitable for the anticipated recreational needs of residents and provide direct access from living areas in accordance with Chapter D1.6.1 Private Open Space Courtyards DCP 2014.</p>
<p><b>Social Impacts - Need for Social Impact Assessment</b></p> <p>The proposal is an overdevelopment of the site and is likely to negatively impact upon the social values and amenity of the current residential neighbourhood of Sunrise Beach. The Kollektive Development that has already established in Sunrise Boulevard has already demonstrated the impacts of unsocial behaviour, excessive noise, on-street parking and pedestrian safety problems and congestion from lack on on-site parking. The proposal in its current form is likely to result in similar negative social impacts.</p>	<p>Under Chapter B12 DCP 2014 a Social Impact Assessment is required for</p> <p align="center"><i>residential developments or subdivisions comprising more than 50 dwellings or lots;</i></p> <p>This development does not require a Social Impact Assessment under the DCP 2014.</p>
<p><b>Waste and Location of Garbage Bins</b></p> <p>The proposal as it stands will result in excess garbage problems within the development and may impact on adjoining residences in the street. Each dwelling should be provided with a separate garbage bin.</p>	<p>Council's standard urban bin services are provided on Council's website and for Multiple dwellings allows bins to be shared between units.</p> <p>Urban multi unit dwellings (three or more units) <i>Council approved, shared between two units.</i></p> <ul style="list-style-type: none"> <li>• <i>Two bin service: 240 litre landfill bin and 240 litre recycling bin (collected weekly)</i></li> <li>• <i>Three bin service: 240 litre landfill bin (collected fortnightly), 240 litre recycling bin and 240 litre organics bin (collected weekly)</i></li> </ul> <p>The development provides bin services in accordance with the above and complies with Council's waste service provision.</p>
<p><b>Adaptable Dwelling:</b></p> <p>There are 3 x 3 bedroom units &amp; 7 x 2 bedroom units in the complex. One of the 2 bedroom units, (Unit No.1) is specified as Adaptable, AS 4299. All units have the bedrooms &amp; bathrooms upstairs. It is unsuitable to have stairs to these essential rooms for elderly or disabled people, unless the measurements of the stair widths are included in the plans, so that there is the potential for an inclinor to be installed.</p>	<p>The applicant has indicated Unit 7 will be an adaptable unit. This has been provided with wider parking space, increased stairway/ hallway widths and additional section showing the minimum heights for external parking areas.</p>

#### 4.11 Public interest

Having regard to the development design and general compliance with Council's planning controls, the proposal is unlikely to prejudice or compromise the public interest or create an undesirable precedent.

### 5. DEVELOPER CONTRIBUTIONS

#### 5.1 Water & Sewer Levies

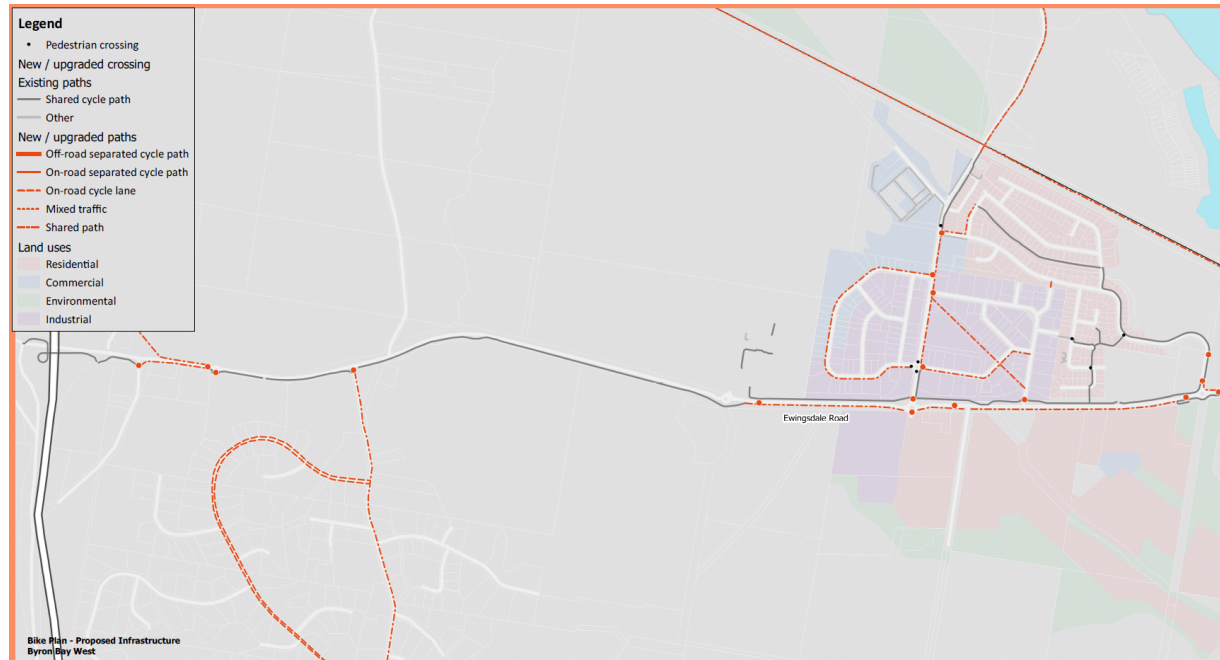
This development generates an additional load onto Council's Water, Bulk Water and Sewer System Council requires Payment of Developer Servicing Charges (prior to issue of a construction/subdivision certificate) of:

- **4.20 ET** for Water &
- **4.20 ET** Bulk Water; and
- **5.75 ET** for Sewer.

#### 5.2 Section 7.11 Contributions

This development will generate a demand for additional public facilities. A condition of consent should be imposed to require the payment of contributions.

The Byron Shire 10 Year Bike Plan 2019 identifies a shared path at the front of this development as per the map below. Council's Development Engineer has recommended that the shared bike path be constructed along Julian Rocks Drive to Sunrise Blvd It is reasonable to offset the cost of these works against the bikeways and footpaths contributions.



### 6. CONCLUSION

The DA proposes Multi-Dwelling Housing Comprising Ten (10) Dwellings. The proposed development is satisfactory having regard to the relevant planning instruments and controls applicable to the site. The proposal raises no significant issues in terms of environmental impacts and the site is considered suitable for the development. The application appropriately addresses the relevant constraints applying to the site, and is recommended for approval subject to the conditions listed in Attachment 3.

**7. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS**

Has a Disclosure Statement been received in relation to this application	No
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed. Where the answer is yes, the application is to be determined by the Director or Manager of the Planning, Development and Environment Division.	No

**8. REASONS FOR DECISION, HOW COMMUNITY VIEWS WERE ADDRESSED**

- 5 *Note: From July 1 2018, Council's are required to give and publicly notify reasons for a range of planning decisions where they are deciding if development should proceed to help community members to see how their views have been taken into account and improve accountability to stakeholders. A statement of reasons for the determination of this application is provided below.*

**Statement of Reasons**

The proposed modifications were minor and substantially the same as the original development approval with no detrimental environmental impacts.
The proposed development complies with the provisions of Byron Local Environmental Plan 2014.
The proposed development complies with relevant State Environmental Planning Policies
The proposed development complies with relevant provisions of Development Control Plan 2014
The proposed development complies with Environmental Planning & Assessment Regulation 2000 considerations.
The proposed development will not have significant adverse impact on the natural, built or social environment or economic impacts on the locality.
The proposed development is considered suitable for the proposed site.
The development application was notified/advertised in accordance with Development Control Plan 2014. Issues raised in the submissions have been addressed during assessment of the application.
The proposed development is unlikely to prejudice or compromise the public interest.

**How community views were addressed**

The DA was advertised in accordance with Development Control Plan 2014. The submissions received were considered on merit and addressed during assessment of the application.
To view the considerations, please contact Council to view a copy of the assessment report relating to this DA.

10

**Report No. 13.8**      **PLANNING - Planning Proposal 26.2019.11.1 - Lot 6 DP 8385 Yagers Lane, Skinners Shoot - Request for Dwelling Entitlement**  
**Directorate:**      Sustainable Environment and Economy  
**Report Author:**      Dylan Johnstone, Planner  
**File No:**              I2020/778

**Summary:**

Council has received a planning proposal to amend Byron LEP 2014. The planning proposal seeks a dwelling entitlement for the land so that development consent can be sought for the use of an existing unauthorised dwelling house on the land. The matter is the subject of current enforcement action in accordance with Council's Enforcement Policy, the outcome of which will be determined as a consequence of Council's resolution on this report.

The land has an area of approximately 4.1 hectares and is zoned RU2 pursuant to LEP 2014. The planning proposal is consistent with the *Byron Rural Land Use Strategy 2017* and the *North Coast Regional Plan 2036*.

The following report provides the Council with options on to how to proceed with the planning proposal and the relevant information that has been provided to Council to make an informed decision in this regard.

**NOTE TO COUNCILLORS:**

In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.



---

**RECOMMENDATION:**

**That Council:**

1. **Proceed with option 1 to request the NSW Department of Planning, Industry and Environment to issue a Gateway determination for the planning proposal as contained in Attachment 1 (E2020/40745).**
2. **Agree that staff can proceed to obtain further studies from the applicant (if required by the Gateway determination), then undertake public exhibition of the planning proposal and government agency consultation based on the Gateway determination.**
3. **Request staff to prepare an Unauthorised Residential Accommodation Policy as a matter of priority to identify planning pathways and consequences for Unauthorised Residential Accommodation seeking regularisation, and that this be reported to the next available Planning meeting for consideration of public exhibition.**

**Attachments:**

- 1      26.2019.11.1 - Planning Proposal to obtain Dwelling Entitlement Lot 6 DP 8385 - Joe Davidson - Lot 6 Yagers Lane Skinners Shoot, E2020/40745 
- 2      Special Disclosure and Pecuniary Interest Form, E2012/2815 

**REPORT**Background

5 Council records indicate that ownership of the land was transferred to the current landowners on 21 May 2014.

10 A Planning Certificate was issued by Council to the previous landowner dated 5 February 2014 in accordance with Section 149(5) of the Environmental Planning and Assessment Act 1979. This certificate specified that a dwelling house is not permitted to be erected on the land with the development consent of Council pursuant to Byron Local Environmental Plan 1988.

15 Historically, Lot 6, together with Lots 4, 7 & 8 of DP 8385 formed an “existing holding” on the relevant day as defined within Clause 15 of LEP 1988. Pursuant to clause 15 of Byron LEP 1988 an existing holding is entitled to one ‘dwelling entitlement’ over the entire aggregation of lots in the holding.

20 The ownership of the four lots comprising the existing holding changed on 11 October 2013. Clause 4B of the *Environmental Planning & Assessment Act 1979* defines ‘subdivision of land’ which includes reference to a division of land affected by ‘conveyance, transfer or partition’. Consequently as of 11 October 2013 the land no longer satisfies the requirements for an “existing holding” under the terms of Clause 15(2)(b) of LEP 1988. Accordingly Lot 6 does not hold a dwelling entitlement as reflected in the Section 149(5) certificate issued 5 February 2014.

25 On 21 July 2014 Council wrote to the legal representatives of the previous landowner in response to a request for clarification on information contained within the Planning Certificate dated 5 February 2014 regarding the “dwelling entitlement” status of the land. This correspondence reaffirmed Council’s position that a dwelling was not permitted to be erected on the land. Council further advised that, should the landowner wish to pursue a dwelling entitlement on the subject lot, 30 a planning proposal to amend the LEP could be submitted.

35 On 30 May 2016 Joe Davidson Town Planning, on behalf of the current landowners, made application to Council for development related advice. The application requested clarification on whether a dwelling house could be erected on the land, under two hypothetical scenarios, in the absence of a “dwelling entitlement” in accordance with Clause 15 of Byron Local Environmental Plan 1988.

40 Council issued a response to the request for development related advice dated 31 August 2016. This response advised that consent could not be granted in either of the proposed scenarios as the land does not have a “dwelling entitlement” and does not comply with Clause 15 of LEP 1988.

45 On 28 July 2016 Council received a complaint regarding the alleged construction of a dwelling house on the land without consent. On the same day the site was inspected by a Council compliance officer who determined that construction of what appeared to be a dwelling house had commenced without consent.

50 A Show Cause letter was issued on 2 August 2016 providing the opportunity for the landowners to demonstrate why formal enforcement action should not be taken for unauthorised development in relation to the construction of an alleged dwelling.

55 On 16 August 2016 the landowners responded by advising that the building under construction was a farm building not a dwelling house and advised that as a farm building is permitted as exempt development in accordance with State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 that were not in breach of the local environmental plan.

Council accepted the response from the landowners in good faith and on 3 February 2017 determined that no further action would be taken at that time.

5 On 14 June 2018, Council again received a complaint regarding an alleged unauthorised dwelling house on the land. The site was inspected by a Council compliance officer on 7 July 2018 who confirmed that the building was being used as a dwelling house.

10 Compliance staff subsequently issued a Notice of Proposed Order No. 3 – Demolish Works on 18 July 2018 to require the dwelling to be demolished.

15 On 3 September 2018 Council received representations from the landowners to advise why an Order No. 3 should not be issued. Representations advised that the building was originally constructed as a farm building for storage and rural workers facilities (toilets showers and lunchroom) for people that would be working on the property for agricultural pursuits. The landowners further advised that due to a change in accommodation circumstances their family was forced to use the farm building on the property for accommodation.

20 Within the representations the landowners also advised that, in order to rectify outstanding matters, they will seek approval to operate the existing On-site Sewerage Management System, seek development consent for use of the building as a dwelling house and apply for a Building Information Certificate to demonstrate structural adequacy and safety of the building. It was advised that Joe Davidson Town Planning would be preparing a development application that would be lodged in 60 day time frame.

25 Over a time period of approximately six months the landowners and Joe Davidson intermittently updated Council compliance staff on progress with regard to submission of an application for approval to operate the existing On-site Sewerage Management System, a Development Application, an application for a Building Information Certificate, and with discussions with Council's Strategic Planning staff regarding obtaining a dwelling entitlement for the land.

30 Given that over nine months had passed since the issue of a Notice of Proposed Order No. 3 – Demolish Works on 18 July 2018, and that a Development Application had not been submitted, Council compliance staff issued an Order No. 3 – Demolish Works on 1 May 2019 requiring the dwelling to be demolished.

35 The landowners' legal representative wrote to Council on 23 May 2019 arguing that the Order No. 3 dated 1 May was invalid and should be withdrawn. It was argued that procedural fairness had not been granted as Council had not sufficiently considered that the giving of the Order would make the landowners homeless and that it is not appropriate for Council to issue an order requiring the building to be demolished as the original configuration of the structure is permitted as an exempt development Farm Building. Council subsequently withdrew the Order.

40 A revised Notice of Proposed Order No. 1 – Stop Use of the existing dwelling was issued on 27 August 2019 and the subject planning proposal has been submitted to address this Notice.

45 **Subject Land**

The land is described as Lot 6 DP 8385 with an area of approximately 4.1 hectares and has a regular shape. The street address is informally known as 31 Yagers Lane, Skinners Shoot. The land contains an existing unapproved dwelling house.





**Figure 1: Subject land showing existing dwelling**

*The Planning Proposal*

5 The planning proposal (Attachment 1) seeks to obtain a dwelling entitlement for the land that will allow for a Development Application to be lodged with Council seeking retrospective consent for the use of the existing building as a dwelling house on the land.

Specifically, the planning proposal seeks to add the land to Schedule 1 – Additional permitted uses of LEP 2014 to permit a dwelling house with consent on Lot 6 DP 8385.

10 ***Key issues***

1) *Byron Shire Rural Land Use Strategy*

15 Action No. 22 of the *Byron Shire Rural Land Use Strategy 2017* (BSRLS) recommends investigation into a strategic framework for resolving dwelling entitlement issues. This action provides the strategic basis for the subject planning proposal to be assessed and determined by Council.

2) *North Coast Regional Plan*

20 The Plan identifies 25 strategic directions within 4 broader goals. The following directions are identified as being relevant to the subject planning proposal:

- Direction 1: Deliver environmentally sustainable growth
- Direction 3: Manage natural hazards and climate change
- Direction 14: Provide great places to live and work
- Direction 22: Deliver greater housing supply
- 25 • Direction 23: Increase housing diversity and choice
- Direction 24: Deliver well planned rural residential housing areas

The proposal does not offend these directions.

3) *LEP 2014*

30 The land is zoned RU2 Rural Landscape in accordance with LEP 2014.

4) *Section 9.1 Directions*

The planning proposal is inconsistent with some Section 9.1 Directions because it:

- Increases the permissible density of land within a rural zone by seeking a dwelling entitlement for a lot which currently does not have a dwelling entitlement.
- 5      • has not yet been referred to RFS for bushfire consideration
- introduces site specific provisions

These inconsistencies are discussed in more detail in the planning proposal.

5) *SEPP 55 and Land Contamination*

- 10      A search of Council records and geographical information mapping did not identify any constraints of concern such as acid sulfate soils, cattle dip sites or past land uses associated with land contamination.

- 15      A Preliminary Contaminated Land Assessment prepared by Greg Alderson & Associates dated November 2019 and submitted with this planning proposal provides that soil sampling results were below the Health Investigation Levels (HIL) in accordance with the National Environment Protection (Assessment of Site Contamination) Measure. Reporting was conducted in accordance NSW EPA (2000) Guidelines for Consultants Reporting on Contaminated Sites.

- 20      The site is considered to be suitable for residential land use. However, based on limitations identified in the submitted contaminated land assessment, any future development application for residential land use should include the provision of an Unexpected Findings Protocol (Contaminated Land).

6) *Bush fire*

- 25      The site is partially subject to bush fire prone land mapping. However the location of the existing dwelling is not subject to bush fire prone land mapping and therefore is not required to meet Planning for Bushfire Protection 2019 requirements.

7) *Flooding*

- 30      Flood modelling information available to Council indicates that the majority of the site (including the site of the existing dwelling) is not inundated during the Probable Maximum Flood (PMF).

- 35      Access to the site during a flood is compromised as Yagers Lane and Skinners Shoot Road are inundated during flood events, however there is no need to evacuate during a flood given the site has land above the PMF.

8) *Onsite sewage management*

- 40      An on-site Wastewater Management Report prepared by Greg Alderson & Associates dated November 2019 and submitted with this planning proposal demonstrates that wastewater generated by a future dwelling can be adequately managed via an On-site Sewage Management Facility comprising a Septic Tank. The site is considered to be suitable for treatment and disposal of wastewater.

9) *Land Use Conflict*

- 45      The subject site is located approximately 200 metres from a former piggery to the south on Lot 8 DP 8385, and 500 metres to an electricity power station contained on Lot 1 DP 1184803, to the southeast. Other surrounding land uses comprise large rural residential allotments and grazing

lands. It is considered that granting of a dwelling entitlement on Lot 6 DP 8385 will not create any significant land use conflict between the identified adjoining land uses.

*10) Aboriginal Heritage*

- 5 A search of the Aboriginal Heritage Information Management System dated 4 November 2019 was undertaken by the applicant and submitted with this planning proposal. The search did not identify any aboriginal sites or places within proximity of the subject site.

*11) Farmland Protection*

- 10 The site is not identified as containing regionally or state significant farmland.

*12) Developer Contributions / Planning Agreement*

The planning proposal seeks to amend LEP 2014 so that a dwelling is permitted with consent on the subject site.

- 15 If a dwelling is permitted on the site, this will create additional demands on rural roads, community facilities, open spaces etc. Such demands are captured by the Byron Shire Developer Contributions Plan 2012 which requires a monetary contribution in accordance with the Plan and Section 7.11 of the *Environmental Planning and Assessment Act 1979*.

- 20 Ordinarily contributions would be paid at the time of subdivision for creating a lot with a dwelling entitlement equivalent to one Standard Dwelling Unit (SDU) (3 bedroom dwelling or greater). However, for the purposes of this planning proposal, there is no clear mechanism within the Contributions Plan for applying developer contributions.

- 25 The submitted planning proposal included a letter of offer to enter into a planning agreement with Council. The offer proposes payment of a monetary contribution equivalent to one SDU.

- 30 Council staff have no justification to require additional contributions over and above the demand normally generated for a rural dwelling under the terms of the Contributions Plan 2012.

However, Council may resolve to apply different terms in the agreement if deemed reasonable and appropriate in the circumstances.

- 35 A formal agreement will need to be drafted to be exhibited concurrently with the planning proposal.

***Options to Move Forward***

- 40 Staff reported a proposed preliminary framework for an 'Unauthorised Residential Accommodation Policy to the Strategic Planning Workshop on 3 October 2019. The proposal outlined planning pathways for three different scenarios involving unauthorised residential accommodation:

- Pathway 1 – Land has a dwelling entitlement and contains unauthorised residential accommodation – development consent may be sought.
- 45 • Pathway 2 – Land does not have a dwelling entitlement and contains unauthorised residential accommodation – meets the strategic merit test for LEP amendment - Planning Proposal may be submitted before development consent may be sought.
- Pathway 3 – Land may or may not have a dwelling entitlement and contains unauthorised residential accommodation – does not meet the strategic merit test for LEP amendment
- 50 and does not comply with LEP and DCP provisions – Enforcement action as per

Enforcement Policy 2016 to follow i.e. Orders to demolish/restore to previously approved use as appropriate.

Recommendation 1 of this report corresponds to Pathway 2.

5 The as proposed Unauthorised Residential Accommodation Policy has not progressed since the SPW on 3 October 2019 and therefore there is no specific Council policy framework guiding the assessment of the subject planning proposal. This planning proposal is the first of its type and, subject to the determination, there may be many other planning proposals that follow that will not all be equal in their circumstances.

10 This planning proposal has demonstrated that it meets the strategic merit test. The land is not mapped as regional or state significant farmland, the land has been historically cleared of vegetation and the existing dwelling does not present any significant environmental impact. While parts of the land are mapped as bushfire prone and flood prone the location of the existing dwelling is not bushfire prone or flood prone. The site has legal and practical vehicular access via direct frontage to Yagers Lane and the existing dwelling does not unreasonably increase the demand for services. The site does not contain any recorded Aboriginal sites or declared Aboriginal places.

20 The above demonstrates that the existing dwelling is located on an unconstrained site while many sites that Council's Community Enforcement Team investigate for unauthorised residential accommodation, particularly in the hinterland areas, are severely constrained in terms of bushfire, access, ecological matters, onsite sewage management etc. and can be without legal and practical access.

25 It is critical that Council have a formal policy position to guide any future planning proposals regarding these matters.

### ***Conclusion***

30 This planning proposal was anticipated as a response to compliance action that has been carried out in relation to the existing unauthorised dwelling house on the site.

There are two options for Council:

1. Proceed with the planning proposal and request the DPIE to proceed to issue a Gateway determination for the planning proposal as attached to this report;
2. Not proceed with the planning proposal and provide reasons to the applicant; and progress enforcement action in accordance with the Council's Enforcement Policy.

## STRATEGIC CONSIDERATIONS

*Community Strategic Plan and Operational Plan*

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
<b>Community Objective 4: We manage growth and change responsibly</b>	4.2	Support housing diversity in appropriate locations across the Shire	4.2.1	Establish planning mechanisms to support housing that meets the needs of our community		
<b>Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community</b>	2.4	Enhance community safety and amenity while respecting our shared values	2.4.3	Enhance public safety, health and liveability through the use of council's regulatory controls and services	2.4. 3.1	Monitor, investigate and resolve complaints in relation to community safety, land use and the environment

5 **Legal/Statutory/Policy Considerations**

The relevant legal/statutory/policy considerations have been noted above.

**Financial Considerations**

- 10 If Council chooses to proceed with the planning proposal, it will be at the proponent's expense as a land owner initiated planning proposal. Full cost recovery of the remaining stages will be required by Council. If the applicant chooses not to pay then the planning proposal will not proceed.
- If Council chooses not to proceed then the matter does not incur any additional costs.

15 **Consultation and Engagement**

- If Council chooses to proceed with the planning proposal, it will be forwarded to the NSW Department of Planning & Environment for a Gateway determination. A positive determination will
- 20 identify any government agency or other consultation requirements.

**Report No. 13.9**      **PLANNING - Submissions Report: Draft Byron Local Strategic Planning Statement**  
**Directorate:**      Sustainable Environment and Economy  
**Report Author:**      Alex Caras, Land Use Planning Coordinator  
**File No:**              I2020/784

**Summary:**

The Local Strategic Planning Statement (LSPS) is a new legislative requirement that has been designed to provide the link between the State Government's strategic plans and Council's local land use plans and guidelines. All NSW Councils are required to prepare a LSPS by **1 July 2020**.

The draft Byron LSPS presents a 2036 vision and framework for land use within our Shire. Structured around four (4) key themes that align with the vision and community priorities in our Community Strategic Plan – *Our Byron Our Future 2028* (CSP), the draft LSPS includes 14 Planning Priorities along with corresponding actions, timeframes and the means for monitoring and reporting on the delivery of these actions. Most of these priorities align with Council's current Delivery Program/ Operational Plan (DP/OP); however some actions are new and represent "gaps" to be included in a future DP/OP.

The draft LSPS was exhibited for a period of 5 weeks from 2 April – 8 May, with a total of 27 submissions received. Most submissions focused on planning priorities and actions within the draft LSPS relating to one or more of the following themes: Sustainable Shire; Liveable Shire; Thriving Shire and Connected Shire.

This report provides a summary of the key matters raised in submissions, together with a response and any proposed changes. Due to 1 July 2020 deadline for finalising Council's LSPS, a number of the additional priorities and actions recommended in submissions are deferred for consideration in future LSPS reviews.

Proposed changes to the draft LSPS are presented in Table 1 of this report for Council's consideration and endorsement. Overall the changes are considered minor in nature.

**NOTE TO COUNCILLORS:**

In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

---

**RECOMMENDATION:**





**That Council:**

- 1. Endorses the recommended changes to draft Byron Shire Local Strategic Planning Statement (LSPS), as contained in Table 1 of this report, in response to submissions received during exhibition;**
- 2. Authorises the Director Sustainable Environment & Economy (through the General Manager) to update the draft LSPS to reflect the endorsed changes, as well as undertake any necessary formatting, grammatical edits, diagrams and/or other 'non-policy' updates to ensure a suitable standard for submission to the Department of Planning, Industry & Environment;**



3. **Submits the revised LSPS to the Department of Planning, Industry & Environment on or before the 1 July 2020 legislative deadline.**
4. **Notes that there are a number of matters raised in Attachment 2 (E2020/35382) that, due to the 1 July 2020 legislative deadline for finalising Council's LSPS, will be more appropriately considered in future reviews.**

**Attachments:**

- 1 Draft Local Strategic Planning Statement 2020 as exhibited, E2020/21470 
- 5 2 Submissions Summary table - Draft Local Strategic Planning Statement, E2020/35382 
- 3 Copy of government agency submissions, E2020/38187 
- 4 Confidential - Copy of non-government agency and community submissions, E2020/38181
- 5 Form of Special Disclosure of Pecuniary Interest, E2012/2815 

10

**REPORT****LSPS Overview**

The Local Strategic Planning Statement is a legislative requirement designed to provide the link between the State Government's strategic plans and Council's local land use plans and guidelines. The Statement sits within Council's Integrated Planning and Reporting Framework, providing an important link with our Community Strategic Plan 'Our Byron Our Future 2028'.

The draft Byron Shire Local Strategic Planning Statement (LSPS) presents a 2036 vision and framework for land use within our Shire. This includes 14 Planning Priorities along with corresponding actions, timeframes and the means for monitoring and reporting on the delivery of these actions. By combining key priorities and actions from our existing land use plans and strategies into one accessible document, the LSPS aims to make it easier for the community to understand the overall direction for land use planning in their local area.

The LSPS will be a living document, updated regularly to ensure it reflects current information, which in turn will inform our Local Environment Plan (LEP), Development Control Plans (DCP) and infrastructure contribution plans. Importantly, the LSPS must be considered when these documents are reviewed and updated.

Due to the tight legislative timeframe for all NSW councils to prepare their LSPS by **1 July 2020**, this is an evolving document that will be updated on a regular basis to accurately reflect completion of new land use strategies and plans and/or changes in Council's land use planning priorities.

**Exhibition**

Council at its 19 March 2020 Planning Meeting resolved (Res 20-105):

1. That Council endorse the draft Byron Shire Local Strategic Planning Statement (LSPS), as contained in Attachment 1 (E2020/15696), for public exhibition subject to the addition of an explicit reference and action to include the desire and opportunity to activate the rail corridor, both on and off track, as a tourism and economic driver, and also a significant transport and mobility benefit in the 'Support through partnership, a network of integrated sustainable transport options' section of the document.
2. That Council authorise the Director Sustainable Environment and Economy (through the General Manager) to undertake the changes required to meet point 1, and any necessary formatting, grammatical edits, diagrams and/or other 'non-policy' updates to ensure a suitable standard for public exhibition;
3. That Council publicly exhibit the draft Local Strategic Planning Statement during April-May 2020 and undertake the actions/tasks identified in the Community Engagement Plan (as contained in Attachment 2 (#E2020/15697));
4. That Council receive a submissions report and final draft Local Strategic Planning Statement for adoption prior to the 1 July 2020.

The draft LSPS was exhibited for a period of 5 weeks from 2 April – 8 May. A copy of the version exhibited is contained in Attachment 1.

The following government and non-government agencies received formal notification:

- Department of Planning, Industry & Environment (DPIE)
  - Planning Division
  - Biodiversity and Conservation Division (BCD) (Formerly OEH)
- Department of Primary Industries (DPI)
- Road and Maritime Services (RMS)
- Department of Education (DPE)
- Tweed Byron Local Aboriginal Land Council (TBLALC)
- Bundjalung of Byron Bay Aboriginal Corporation (Arakwal).

A total of 55 submissions were received and have been grouped into the following types:

- government agencies
- non-government agencies
- Community groups, broader community members and other

A copy of government agency submissions is contained in Attachment 3 and a confidential copy of non-government and community submissions is contained in Attachment 4.

***Key issues***

Most submissions focused on planning priorities and actions within the draft LSPS as they related to one or more of the following themes:

- Sustainable Shire
- Liveable Shire
- Thriving Shire
- Connected Shire

The main issues raised in submissions can be categorised as follows:

- recommendations to include 'additional' priorities/actions
- relationship of LSPS investigation areas to North Coast Regional Plan (NCRP)
- inclusion of additional NCRP directions in LSPS 'Line of Sight' diagrams and/or Priority Action tables (certain themes)
- additional matters and/or reference documents for consideration

Due to 1 July 2020 deadline for finalising Council's LSPS, a number of the additional priorities and actions recommended in submissions are deferred for consideration in future reviews.

Attachment 2 provides a summary of the key matters raised in submissions, together with a response and any proposed changes.

Proposed changes to the draft LSPS are listed numerically in Table 1 below, all of which are considered minor in nature.

**Table 1 – Recommended changes to draft Local Strategic Planning Statement following exhibition**

Submitter	Matter Raised	Proposed Change
DPIE – Planning Division Northern Region	<ul style="list-style-type: none"> <li><u>Sustainable Shire</u>: Request amendment to line of sight diagram on p. 19 to reference Directions 1 and 4 in the North Coast Regional Plan (NCRP).</li> <li><u>Liveable Shire</u>: Recommends that NCRP Directions 14, 16-18, 20 and 24, are included in the line of sight diagram located on p.30.</li> <li><u>Connected Shire</u>: Amend line of sight diagram on p.50 to include Direction 9 of NCRP.</li> </ul>	<p><b>1. AMEND ‘Liveable Shire: Line of Sight’ diagram to include NCRP directions 1 &amp; 4.</b></p> <p><b>2. AMEND ‘Liveable Shire: Line of Sight’ diagram to include the NCRP directions at left.</b></p> <p><b>3. AMEND ‘Connected Shire: Line of Sight’ diagram to include NCRP direction 9.</b></p>
DPIE – Biodiversity and Conservation Division (formerly OEH)	<ul style="list-style-type: none"> <li><u>Planning Priority SP3</u> (Adapt to climate change and build resilience): Recommends reference to ‘<i>Integrated Regional Vulnerability Assessment: North Coast of New South Wales (2016)</i>’ and the ‘<i>North Coast Enabling Regional Adaptation region report (2019)</i>’ from DPIE.</li> </ul>	<p><b>4. AMEND page 26 of draft LSPS to include reference to ‘<i>Integrated Regional Vulnerability Assessment: North Coast of New South Wales (2016)</i>’ and the ‘<i>North Coast Enabling Regional Adaptation region report (2019)</i>’.</b></p>
Heritage NSW (Dept Premier & Cabinet)	<ul style="list-style-type: none"> <li>Link (Action) LA2 - <i>Prepare cultural heritage predictive mapping to LA4 to develop appropriate planning policies and protection.</i></li> <li>Replace use of “protect historic heritage” in the <i>Liveable Shire: Line of Sight</i> section to be inclusive of Aboriginal and non-Aboriginal heritage protection. Also, in addition to “support and celebrate our heritage” broaden to also identify, protect and conserve.</li> <li>Heritage NSW records show that, in addition to the items of local heritage significance which are listed under Byron LEP 2014 and Byron LEP 1988, the LGA contains: <ul style="list-style-type: none"> <li>part of the ‘Gondwana Rainforests of Australia’ which are included in both the World</li> </ul> </li> </ul>	<p><b>5. AMEND Action LA2 to read: “<i>Prepare Cultural Heritage predictive mapping for integration into business activities, planning policies and related provisions to protect Aboriginal heritage.</i>”</b></p> <p><b>6. AMEND Action LA4 to read: “<i>Develop local heritage studies in consultation with the local Aboriginal community, and adopt appropriate measures in planning strategies and local plans to identify, protect and conserve Aboriginal heritage.</i>”</b></p> <p><b>7. AMEND 2<sup>nd</sup> paragraph on page 20 of draft LSPS to include information contained in the first bullet point at left.</b></p>

Submitter	Matter Raised	Proposed Change
	<p>and National Heritage lists</p> <ul style="list-style-type: none"> <li>○ five State Heritage Register items, including part of the 'High Conservation Value Old Growth Forest' (SHR 01487)</li> <li>○ three Aboriginal Places, and</li> <li>○ 172 Recorded Aboriginal Sites</li> </ul>	
DPI – Agriculture	<ul style="list-style-type: none"> <li>• Suggests further reference to agriculture in this chapter to recognise multi-functional landscape that rural land &amp; agricultural industries provide, including responsibilities of land managers to undertake best management practices. Linking relevant sustainable land management actions of Rural Land Strategy would strengthen the value of agriculture within LSPS beyond economic purpose.</li> </ul>	<p><b>8. AMEND page 47 of draft LSPS to include reference to the “multi-functional landscape that rural land &amp; agricultural industries provide”.</b></p>
Northern NSW Local Health District, Health Promotion Unit	<p>Planning Priority <i>LP1 – Support and celebrate our heritage, vibrant culture and diverse lifestyles.</i></p> <ul style="list-style-type: none"> <li>• Recommends additional wording (in <b>bold</b>) for action <i>LA1 – Prepare a new Arts, Culture and Heritage Policy to provide a strategic framework for arts and culture in Byron Shire and opportunities for people to be involved in the design and development of public art, space design and cultural interpretation.</i></li> <li>• Suggests further detail required for action: LA2. Prepare Cultural Heritage predictive mapping for integration into business activities</li> </ul> <p>Planning Priority <i>LP2 – Create great places that support and encourage an active, connected community.</i></p> <ul style="list-style-type: none"> <li>• Recommends additional wording (in</li> </ul>	<p><b>9. AMEND Action ‘LA1’ to include additional wording at left.</b></p> <p><b>10. AMEND Action LA2 to read: “Prepare Cultural Heritage predictive mapping for integration into business activities, <i>planning policies and related provisions to protect Aboriginal heritage.</i>”</b></p> <p><b>11. AMEND planning priority ‘LP2’ to include minor additional</b></p>

Submitter	Matter Raised	Proposed Change
	<p><b>bold)</b> for planning priority LP2 – “Create great places that support and encourage an active, <b>healthy and connected</b> community.”</p> <ul style="list-style-type: none"> <li>• Recommends additional wording (in <b>bold</b>) to include 'health' in the discussion of 'high quality lifestyle' and 'liveability': (p 34) “A high quality lifestyle is the sum of many parts; <b>it promotes a healthy lifestyle and provides</b> access to high quality built and natural environments including affordable housing options, economic prosperity, safety, equity and opportunities for cultural and recreational experiences.”</li> </ul>	<p>wording at left.</p> <p><b>12. AMEND ‘Liveability’ discussion on p34 to include additional wording at left.</b></p>
Bundjalung of Byron Bay Aboriginal Corporation (Arakwal)	<ul style="list-style-type: none"> <li>• <u>Liveability</u>: Actions that relate to Indigenous rights and interests; the following actions align with NCRP Directions, 16 &amp; 18 – this needs to be indicated in the Liveable Shire action table p.37. <ul style="list-style-type: none"> <li>○ LA2 Prepare Cultural Heritage predictive mapping for integration into business activities – 2021</li> <li>○ LA3 Update Council’s Community Participation Plan to include specific engagement strategies with local Aboriginal communities – 2021</li> <li>○ LA4 Develop local heritage studies in consultation with Aboriginal community, and adopt appropriate measures in planning strategies and local plans to protect Aboriginal heritage – ongoing.</li> </ul> </li> <li>• Suggests incorporating intent of NCRP directions 16, 18 into liveable Shire Line of sight diagram.</li> </ul>	<p><b>13. AMEND LSPS Liveability Priority Actions on page 37 to include alignment with NCRP Directions 16 &amp; 18 and related actions.</b></p> <p><b>14. AMEND ‘Liveable Shire: Line of Sight’ diagram to include NCRP directions 16 &amp; 18.</b></p> <p><b>15. AMEND 1st paragraph on p31</b></p>



Submitter	Matter Raised	Proposed Change
	<ul style="list-style-type: none"> <li>States that actions LA2-LA4 on page 37 have little link to the rest of the liveability section. Eg. There is a statement about protecting historic heritage in the 'Line of Sight' diagram but nothing about Aboriginal Heritage.</li> <li>Recommends that the wording for the KPI for LA4 be amended to include 'protection of Aboriginal heritage'.</li> <li>Recommends that the current KPI for LA4 'Consultation Protocol developed and consistently applied' is more suited to LA3.</li> <li>Requires further clarity around involvement of Aboriginal community in development of the Arts, Culture and heritage policy mentioned in LA1 before supporting this action.</li> </ul>	<p><b>of LSPS to include the following additional wording:</b>  <b>"It is important that Aboriginal cultural heritage values are respected and protected by the land use planning system.</b></p> <p><b>16. AMEND KPI for Action LA4 on p60 of LSPS to include the following additional wording: ".... for protection of Aboriginal heritage".</b></p> <p><b>17. AMEND KPI for Action LA3 on p60 of LSPS to include the following additional wording: ".... and Consultation Protocol developed".</b></p> <p><b>18. AMEND all references to the policy at left to read 'Arts and Culture Policy'.</b></p>
Community Groups and broader community	<p><u>Sustainable Shire</u></p> <p>(i) Relevant Land Use Strategies, Plans or Policies to be added to Documents to be added to p.19:</p> <ul style="list-style-type: none"> <li>Draft Biodiversity Conservation Strategy</li> </ul> <p>(v) Issues raised around flooding:</p> <ul style="list-style-type: none"> <li>p.26 should note that increased flooding of greater intensity is to be expected in the Shire</li> <li>South Mullumbimby Independent Flood Study should be included as a relevant plan/policy/strategy p. 30</li> </ul>	<p><b>19. AMEND 'Sustainable Shire: Line of Sight' diagram to include <i>Byron Biodiversity Conservation Strategy</i> in the Relevant Land Use Strategies, Plans or Policies list.</b></p> <p><b>20. UPDATE climate changes impact figure on LSPS p26 to include: " ... <i>increased frequency and extent of flooding</i>".</b></p> <p><b>21. AMEND 'Liveable Shire: Line of Sight' diagram to include <i>Draft Mullumbimby Land Release Areas Flood Impact Assessment and Concept SWMP</i> in the Relevant Land Use Strategies, Plans or Policies list.</b></p>

Submitter	Matter Raised	Proposed Change
Other (comment from councillors)	<ul style="list-style-type: none"> <li>Concerned about potentially lengthy timeframe for Action SA7 relating to preparation of a Climate Emergency Plan.</li> </ul>	<b>22. AMEND timing of LSPS Action SA7 - Develop a Climate Emergency Plan from 'short-term' 2021-2025 to 'immediate (2019-2021)'.</b>

### **Implementation, Monitoring and Reporting**

The LSPS will communicate with Byron Shire Council's land use strategies and integrated planning and reporting framework over a 2036 planning horizon. To realise the priority actions from each of our themes, a series of amendments may be required to other Council plans that provide the delivery framework for Council's strategic planning program. These include Council's LEP, DCP and infrastructure contribution plans.

Councils are legislatively required to review their LSPS every 7 years, however the Byron LSPS is expected to be reviewed more frequently to reflect the completion of key land use strategies and plans (currently underway) and/or or changes in Council's land use planning priorities.

## **STRATEGIC CONSIDERATIONS**

### **Community Strategic Plan (CSP) and Operational Plan**

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
<b>Community Objective 4: We manage growth and change responsibly</b>	4.1	Support the visions and aspirations of local communities through place-based planning and management	4.1.1	Develop, implement and update Place Plans that promote place-based forward planning strategies and actions	4.1.1.10	Prepare Local Strategic Planning Statements

The link between the LSPS Planning Priorities, North Coast Regional Plan, Council's CSP, LEP and DCP is illustrated in Figure 1.



**Figure 1: Strategic Policy Context**

**LEGAL/STATUTORY/POLICY CONSIDERATIONS**

The draft LSPS has been prepared in accordance with section 3.9 of the Environmental Planning and Assessment Act 1979 (the Act).

- 5 To meet the requirements of the Act Council must prepare and submit its LSPS to the State government by **1 July 2020**:

**FINANCIAL CONSIDERATIONS**

Preparation of the LSPS is being funded from the current 2019/20 budget.

**CONSULTATION AND ENGAGEMENT**

- 10 The draft LSPS builds on the extensive engagement undertaken in developing Council's Community Strategic Plan, *Our Byron Our Future*, during 2017-2018, including community feedback regarding what residents most like and dislike about Byron Shire, and what people would like to see retained and changed.
- 15 It also builds on recent consultation undertaken across a range of land use planning projects, including:
- Local Growth Management Strategies (Rural Land Use Strategy; Business & Industrial Lands Strategy; draft Residential Strategy)
  - Recent place Plans (Bangalow Village Plan, Byron Bay Town Centre Master Plan, Our Mullumbimby Masterplan, Byron Arts & Industry Estate Precinct Plan (draft))
  - Tourism Planning (Sustainable Visitation Strategy (draft), stakeholder engagement to inform planning for Short term rental accommodation )
- 20
- 25 Stakeholder consultation before and during exhibition was undertaken in accordance with the LSPS Communication and Engagement Plan (CEP), which was guided by the following objectives:
- To inform/consult the community about the Local Strategic Planning Statement (LSPS) and its public exhibition.
  - To ensure the community has a good understanding the role of a LSPS and how it fits in the overall planning framework.
  - To provide clear 'plain speak' and easily understood information via various media and activities.
  - To attract a high level of stakeholder engagement and submissions to Council on the draft LSPS.
- 30
- 35 **The main departure from the CEP was the inability to have face-to-face engagement with the public during the exhibition period due to COVID-19 restrictions.**

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.10

**Report No. 13.10**      **PLANNING - Update on resolution 20-100 Reconsider carparking plan to Planning Agreement DA 10.2019.103.1 Restaurant at 784 Coolamon Scenic Drive Coorabell**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Nancy Tarlao, Planner

Noreen Scott, EA Sustainable Environment and Economy

**File No:** I2020/809

### Proposal

<b>DA No:</b>	10.2019.103.1		
<b>Proposal description:</b>	Restaurant		
<b>Property description:</b>	LOT: 384 DP: 727453		
	784 Coolamon Scenic Drive COORABELL And Adjoining Council Road Reserve known as Scarrabelottis Lookout		
<b>Parcel No/s:</b>	13110		
<b>Applicant:</b>	Newton Denny Chapelle		
<b>Owner:</b>	Mr P S Grenquist & Ms Y Shibasaki		
<b>Zoning:</b>	7 (d) Scenic Escarpment Zone under BLEP 1988		
<b>Date received:</b>	27 February 2019		
<b>Integrated / Designated Development:</b>	<input type="checkbox"/> Integrated	<input type="checkbox"/> Designated	<input checked="" type="checkbox"/> Not applicable
<b>Public notification or exhibition:</b>	<ul style="list-style-type: none"> <li>– Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications</li> <li>– Exhibition period: 21/3/19 to 3/4/19</li> <li>– Submissions received: 24 submissions received</li> </ul>		
<b>Variation request</b>	<input type="checkbox"/> Clause 4.6	<input type="checkbox"/> SEPP 1	<input checked="" type="checkbox"/> Not applicable
<b>Issues:</b>	<p>Matter deferred by Council 19 March 19 2020:</p> <p><b>20-100 Resolved</b> that the matter be deferred to provide an opportunity for the proponent and staff to reconsider an amended car parking plan in relation to the Planning Agreement and the Development application 10.2019.103.1.</p> <p>Amended car parking plan submitted removing the need for the Planning Agreement.</p>		

### Summary:

Development consent is sought for a 40 seat restaurant on land adjacent to Scarrabelottis Lookout at Coolamon Scenic Drive, Coorabell. The subject site property is long and narrow located along the prominent part of the ridgeline in this area with the land zoned 7(d) Scenic Escarpment. The subject site adjoins Scarrabelottis Lookout which is the highest point in the immediate area and contains majestic 180 degree views from Byron Lighthouse, Pacific Ocean and around towards Mount Chincogan. The proposed restaurant adjoining Scarrabelottis Lookout is proposed to be open Wednesday to Sunday as follows:

- Wednesday, Thursday and Friday: 11.30 - 3.30 pm
- Saturday – Sunday: 8.30-3.30 pm

The application also included a planning agreement for the construction of 8 car parking spaces within the adjacent Scarrabelottis lookout to make up for a shortfall in car parking of four spaces to support the development. Details of the original assessment are contained in the report link below: [https://byron.infocouncil.biz/Open/2020/03/PLAN\\_19032020\\_AGN\\_1154.PDF](https://byron.infocouncil.biz/Open/2020/03/PLAN_19032020_AGN_1154.PDF))

The application was reported to Council Planning meeting 19 March but deferred by Council as follows:

**20-100 Resolved** that the matter be deferred to provide an opportunity for the proponent and staff to reconsider an amended car parking plan in relation to the Planning Agreement and the Development application 10.2019.103.1. (Richardson/Hunter)

The applicant has provided further information to address the matters raised in the resolution including amended plans. The amendments have reconfigured the car parking area so that the required car parking is now located on-site and all access is achieved via the Council road reserve, as such the need for the planning agreement for car parking within the lookout is no longer required. Notwithstanding the above, the applicant has still included a proposal to embellish the lookout (which is located within the road reserve) as it provides access to the restaurant site. In addition to the driveway and upgrade to the entrance at Coolamon Scenic Drive, the applicant has proposed:

- Landscaping and further plantings
- A new shelter with paving, viewing platform and interpretative signage
- Informal parking for lookout visitors.

These additional works are not required to satisfy the development requirements for the restaurant, with all parking required under DCP 2010 now situated on the development site. However, they will potentially benefit to the community and provide uplift to the current Scarrabelottis Lookout arrangements. Conditions of consent are recommended requiring these works be completed as part of the development.

It is considered the amendments to the development provide for a general improvement to the public amenity without the need for Council to enter into the Planning agreement with the developer to provide necessary infrastructure on council land. The application is recommended for approval subject to Conditions of Consent.



#### NOTE TO COUNCILLORS:

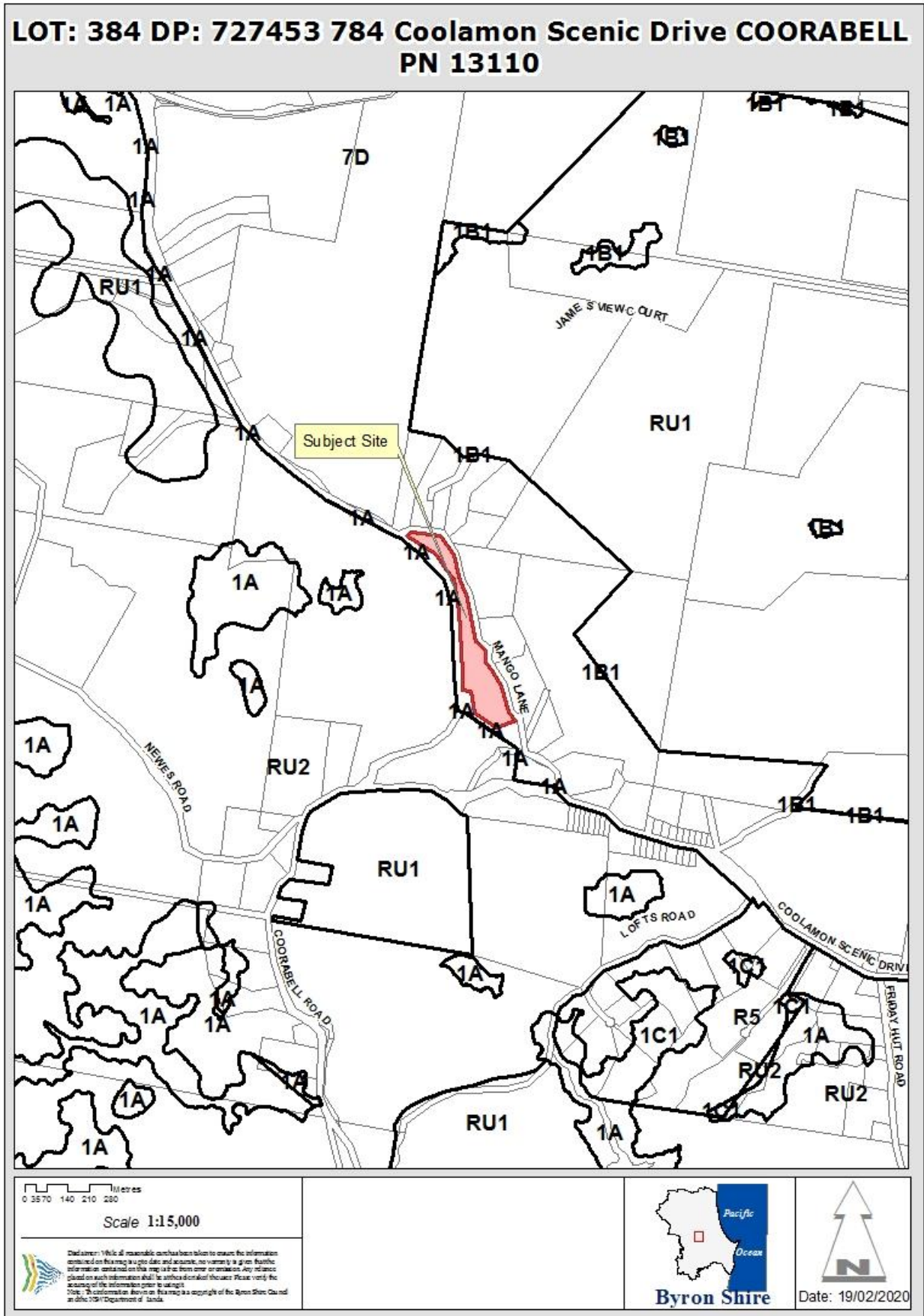
In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

#### RECOMMENDATION:

**That, pursuant to Section 4.16 of the *Environmental Planning & Assessment Act 1979*, Development Application 10.2019.103.1 for restaurant and associated works be approved subject to conditions of consent in Attachment 2 (E2020/40669).**

#### Attachments:

- 1 Revised Plans 10.2019.103.1, E2020/40485 
- 2 Recommended Conditions of Consent, E2020/40669 





**REPORT**

Council considered Report No. 13.2 at the Council Planning meeting held on 19 March 2020 – DA10.2019.103.1 for land at 784 Coolamon Scenic Drive Coorabell for a *Restaurant and Planning Agreement for Upgrade of Public Road and Carpark*.

The Council resolved to defer the matter as follows:

**20-100 Resolved** that the matter be deferred to provide an opportunity for the proponent and staff to reconsider an amended car parking plan in relation to the Planning Agreement and the Development Application 10.2019.103.1.(Richardson/Hunter)

Link to the report dated 19 March 2020 below:

[https://byron.infocouncil.biz/Open/2020/03/PLAN\\_19032020\\_AGN\\_1154.PDF](https://byron.infocouncil.biz/Open/2020/03/PLAN_19032020_AGN_1154.PDF)

Following the 19 March 2020 Council Planning meeting, the applicant provided further information to address the matters raised in the resolution. The plans were amended as follows:

- Provision of the required 15 car parking onsite removing the need for the Planning Agreement Reallocate car parking at the lookout to the proposed site;
- Landscape improvements and embellishment to Scarrabelottis Lookout including 10 informal parking spaces for visitors to the lookout, new shelter and viewing platform interpretative signage and plantings

The land use is defined under LEP 1988 as *restaurant*, which is permitted with development consent in the 7 (d) Scenic Escarpment Zone.

This report presents to Council a response to the matters raised in this resolution as detailed below:

**Reallocate car parking at the lookout to the proposed site**

The development generates the need for 15 car spaces under DCP 2010 based on a floor area of 112m<sup>2</sup>. The proposed development is considered to satisfy the relevant provisions of Byron DCP 2010.

In terms of the reference under DCP 2014 Chapter B4 the same policy calculation of 1 per 7.5m<sup>2</sup> (GFA) in rural and non urban zones applies. The proposal therefore also complies with the requirements under DCP 2014 Chapter B4. An extract from the plans is provided below.

**Landscape Improvements to the lookout**

The applicant has identified the opportunity for additional embellishment for the lookout which is volunteered as part of the assessment process including:

- Tree/shrub landscape plantings;
- 10 x Informal gravel car spaces;
- Oversized timber wheel stop / log seating;
- Provision of a new lookout shelter;
- Viewing platform;
- Rural style boundary fencing;
- New gate to enable the lookout to be locked at night if required.



## Scarrabelottis Lookout Plans



**5 Perspectives of Viewing Platforms**



The revised landscape plan (Scarrabelottis Lookout Option 3 – DA 08) shows the design for a upgraded lookout and associated shelter area. The key design elements involve 10 car parking spaces (gravel base) for visitors with oversized timber stops (to be used for informal seating) demolition of the old shelter and construction of a cantilevered roof structure and terrace. The new terrace area extends into a viewing platform and interpretive signage. Additional landscaping and plantings are proposed with native endemic species (big scrub species). Fencing on boundaries between the lookout and subject restaurant property will provide a degree of territorial enforcement and may assist in the land owner applying his private property rights from overnight campers.

The works and landscaping will improve the overall appearance and aesthetics of the lookout.

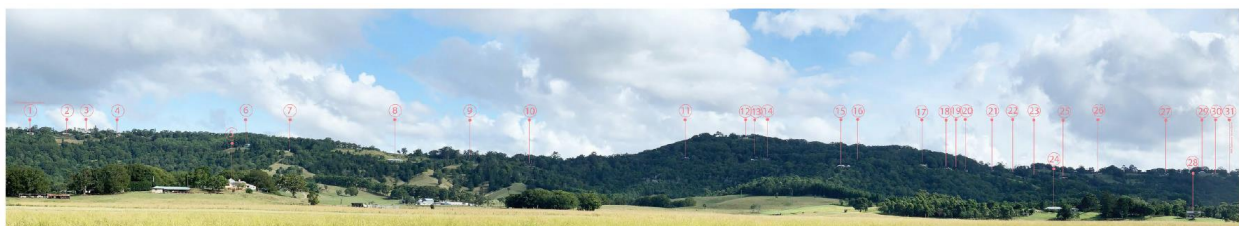
**Should Council not wish to have the lookout embellished as proposed, then Council could remove those conditions from the development consent, with the only works undertaken in the lookout being an access driveway to the restaurant site. It is noted that the lookout is not public open space but road reserve and its use for access to the property is otherwise acceptable.**

### Wastewater Assessment

Due to the car parking being reconfigure the waste water area was also redesigned to accommodate these changes. The applicant submitted an updated On-site Waste Management Assessment report prepared by Greg Aldersons & Associates. The reconfigured waste water disposal area has been further assessed by Council's Environment Health Officer and is supported subject to conditions of consent in relation to the submission and approval of an application under S68 of the Local Government Act 1993 for its installation and operation.

### Visual Impact

Further detail has been provided by the applicant in terms of visual impact on the Scenic amenity of Coolamon Scenic Drive with a photo montage provided when the area is viewed from the valley floor. Detailed plans are included in the attached plans which demonstrate there are a range of buildings located along the ridgeline. In the main they blend into escarpment without generating deleterious impacts on the visual amenity of the skyline.



North East View of Ridge from James Court View  
Restaurant Located at 10.42

The subject building is nominated as Building 12 on the applicants plan. As discussed in the previous DA report to Council, the applicant has demonstrated that there is no alternative location on this subject site to locate the proposed Restaurant and associated waste water system. The site is physically constrained due to the steep topography and narrow width of the site on the escarpment. Further the building will be screened from the west by existing vegetation along the road boundary, which will also form a back drop to the building when viewed from the east. This will be further embellished by additional plantings whilst the colour scheme of dark colours will further assist in mitigating any visual impacts. It is considered the proposal meets the requirements under Clause 30 and 31 of Byron LEP 1988 and the objectives of the 7(d) Scenic Escarpment Zone.



Extract of View of the Ridgeline from James Court

## 5 Conclusion

The additional information provided by the applicant has suitably addressed the reasons for deferral in the Council resolution. The proposed development is in accordance with the relevant planning controls that apply to the site, and it now does not rely upon a planning agreement for car parking on the adjacent Scarrabelottis Lookout to meet DCP requirements.

Notwithstanding the applicant has still proposed embellishment to the lookout in terms of landscaping and associated improvements works including a new shelter, viewing platform, regraded car parking and log wheel stops. The works will improve the overall appearance and aesthetics of the lookout. **Should Council not wish to have the lookout embellished as proposed, then Council should remove these conditions from the development consent, with the only works undertaken in the lookout being an access driveway to the restaurant site via the road reserve.**

The application is recommended for approval subject to conditions of consent.